CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 432

WILLIAM E. LAMB, PETITIONER,

vs.

STERLING B. CRAMER ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 3, 1931

CERTIORARI GRANTED NOVEMBER 2, 1931

(36,246)

(36,246)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 432

WILLIAM E. LAMB, PETITIONER,

vs.

STERLING B. CRAMER ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

	Page
Proceedings in United States circuit court of appeals, fifth circuit	*a*
Caption ..... (omitted in printing)	
Record from district court of the United States, Northern Mississippi.	1
Bill of complaint, No. 129 (in equity)	1
Interrogatories to be answered by the defendant Florence T. Holland	34
Interrogatories to be answered by defendants Planters National Bank of Clarksdale et al	39
Interrogatories to be answered by Mary H. Hays et al	40
Interrogatories to be answered by L. C. Townes	41
Exhibit "A"—Judgment in case No. 153 (at law) Chemical National Bank vs. W. P. Holland, northern district of Miss.	43
Exhibit "B"—Writ of fi. fa	44
Exhibit "C"—Assignment of judgment, Chemical National Bank to Sterling B. Cramer, northern district of Miss	46
Exhibit "D"—Deed of gift from W. P. Holland to Florence Holland, dated 5/1/20	48
Exhibit "E"—Quitclaim deed from W. P. Holland to Florence Holland, dated 9/27/20	53
Exhibit "F"—Quitclaim deed from W. P. Holland to Florence T. Holland, dated 4/28/24	55
Exhibit "G"—Deed from W. P. Holland to Florence Holland, dated 7/20/21	56
Supplemental bill of complaint and application for receiver	58

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 18, 1931

	Page
Interrogatories to be propounded to president of Oakhurst Co..	70
Order allowing Canal Bank & Trust Co. to intervene.....	71
Petition of intervention of Canal Bank & Trust Co.....	72
Exhibit "A"—Judgment in case of Canal Bank & Trust Co. vs. Earl Brewer et al.....	113
Exhibit—Writ of fi. fa.....	115
Order allowing Canal Bank & Trust Co. et al. to intervene.....	118
Petition of intervention of Canal Bank & Trust Co. et al.....	118
Petition for contempt against William E. Lamb et al.....	122
Order granting temporary writ of injunction.....	127
Order to show cause on petition for contempt.....	128
Marshal's return on order to show cause.....	130
Decree	131
Order continuing petition for contempt until 6/9/30 at Biloxi, Miss.	146
Answer of William E. Lamb to petition for contempt.....	147
Exhibit "A"—Draft, Planters Natl. Bk. to order of 1st Natl. Bk. of Chicago for $3,796.87, dated 3/5/29.....	168
Exhibit "B"—Draft, Planters Natl. Bk. to order of 1st Natl. Bk. of Chicago for $11,531.25, dated 6/6/29.....	169
Exhibit "C"—Draft, Planters Natl. Bk. to order of 1st Natl. Bk. of Chicago for $12,833.33, dated 12/14/29.....	170
Exhibit "D"—Draft, Planters Natl. Bk. to order of 1st Natl. Bk. of Chicago for $12,833.33, dated 12/14/29.....	171
Exhibit "E"—Draft, Planters Natl. Bk. to order of 1st Natl. Bk. of Chicago for $10,000.00, dated 10/18/29.....	172
Motion of William E. Lamb to dismiss petition for contempt....	173
Decree dismissing petition for contempt.....	175
Appeal bond.....	177
Assignment of errors.....	179
Præcipe for appellants.....	181
Additional præcipe for appellants.....	182
Additional præcipe for appellants.....	183
Clerk's certificate.....	184
Motion and order allowing William E. Lamb, defendant, additional time to file præcipe.....	185
Præcipe for appellee.....	187
Objections of Sterling B. Cramer, plaintiff, to certain additional portions of record asked to be included by defendant, Wm. E. Lamb, in the transcript of appeal.....	190
Order sustaining objections of plaintiff to certain additional portions of record, etc.....	194
Clerk's certificate to supplemental transcript.....	197
Motion to dismiss.....	199
Reply to motion to dismiss.....	199
Argument and submission.....(omitted in printing)..	
Opinion, Dawkins, J.....	207
Judgment	209
Order extending time.....	210
Petition for rehearing.....	211
Order denying rehearing.....	213
Clerk's certificate.....(omitted in printing)..	
Order allowing certiorari.....	214

[Caption omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DELTA DIVISION OF THE NORTHERN DISTRICT OF MISSISSIPPI.

STERLING B. CRAMER,

Plaintiff,

Versus

FLORENCE T. HOLLAND, PLANTERS NATIONAL BANK OF CLARKSDALE, PEOPLES BANK OF JONESTOWN, PLANTERS TRUST & SAVINGS BANK, BANK OF LUBA, PROGRESSIVE STATE BANK, BANK OF HOLLANDALE, PAUL HOLLAND, MARY H. HAYS, RUBY HAYS THOMPSON, PLANTERS MANUFACTURING COMPANY, BANK OF RULEVILLE, F. M. OWENS, L. C. TOWNES,

Defendants.

No. 129 In Equity.

Comes Sterling B. Cramer, a resident citizen of the City of Chicago, Cook County, State of Illinois, hereinafter called plaintiff, in this, his bill of complaint in equity as against Florence T. Holloand, a resident citizen of Clarksdale, Coahoma County, Mississippi; Planters National Bank of Clarksdale, a banking Association organized under and by virtue of the Acts of Congress of the United States of America of June 20th, 1874, with domicile in Clarksdale, County of Coahoma, State of Mississippi; and the

2 Peoples Bank of Jonestown, a banking institution organized under the laws of Mississippi, domiciled at Jonestown, Second

Court District, Coahoma County, Mississippi; the Planters Trust and Savings Bank, a banking institution organized and existing under the laws of the State of Mississippi, domiciled at Clarksdale, Second Court District, Coahoma County, Mississippi; the Bank of Lula, a banking institution organized under the laws of the State of Mississippi, domiciled at Lula, Mississippi, Second Court District, Coahoma County; the Progressive State Bank, a banking institution organized under the laws of the State of Mississippi, with domicile at Tutwiler, Tallahatchie County, Mississippi; the Bank of Hollandale, a banking institution organized under the laws of the State of Mississipi, with domicile at Hollandale, Washington County, Mississippi; Paul Holland, Mary H. Hays and Ruby Hays Thompson, all resident citizens of Hollandale, Washington County, Mississippi; the Planters Manufacturing Company, a corporation organized under the laws of the State of Mississippi, domiciled in the second Court District of Coahoma County, Mississippi; the Bank of Ruleville, a banking institution organized and existing under the laws of the State of Mississippi, with domicile at Ruleville, in Sunflower County, Mississippi; F. M. Owens, a resident citizen of the First Court District of Coahoma County, Mississippi; and L. C. Townes, a resident citizen of Clarksdale, Second Court District of Coahoma County, Mississippi; all of said parties defendant being resident citizens of the Delta Division of the Northern District of the State of Mississippi for the holding of United States Courts.

I.

Plaintiff alleges that this is an action in equity by the plaintiff, a resident citizen as aforesaid of the State of Illinois, on the one part, and the defendants, all resident citizens of

3

the State of Mississippi, having their domicile and residence within the Delta Division of the District Court of the United States for the Northern District of Mississippi; and that the amount involved herein is in excess of $5000.00, exclusive of interest and costs; that this cause of action is by an assignee and owner of a judgment duly transferred to him by the Chemical National Bank, a banking Association with domicile and with resident citizenship in the City of New York, State of New York, assignor and original judgment creditor as will be hereinafter shown, and that the assignor and assignee, both before and since said assignment, are non-residents of the State of Mississippi, and that diversity of citizenship as between both assignor and assignee and all of the defendants existed both before said assignment and since said assignment, and now exists.

II.

The Chemical National Bank, aforesaid, on the 20th day of October, 1925, as appears at Minute Book 4, page 36, of the Minutes of the District Court of the United States for the Delta Division of the Northern District of Mississippi, obtained in cause No. 153 at Law a judgment against W. P. Holland of Clarksdale, Miss., said Holland being a resident citizen of the Delta Division of the Northern District of Mississippi for the holding of United States Courts as aforesaid, for the benefit of said Chemical National Bank, being a resident citizen as aforesaid with domicile in the City of New York, State of New York, for the principal sum of $36,632.78, a copy of which judgment is attached hereto, marked Exhibit "A" and prayed to be made a part hereof as if fully copied herein.

III.

Thereafter, plaintiff alleges that the said Chemical National Bank caused an execution to be issued on said judgment as against the said W. P. Holland, but that the marshal has returned said execution "Nulla Bona", not having found anything belonging to the said W. P. Holland, upon which said execution could be levied, copy of said execution, with return thereon, being herewith attached, marked Exhibit "B" and prayed to be made a part hereof as if fully copied herein.

IV.

Plaintiff alleges that on the 31st day of May, 1928, the said Chemical National Bank of New York, for value received, assigned to the plaintiff the said above named judgment by an assignment and transfer in writing, copy of which assignment is attached hereto marked Exhibit "C" and prayed to be made a part hereof as if fully copied herein, and plaintiff is now the owner of said judgment and all rights both legal and equitable thereunder.

V.

Plaintiff now shows the Court that W. P. Holland is, and has been for more than fifteen (15) years last past, the husband of the defendant, Florence T. Holland, and that the said W. P. Holland is indebted to the plaintiff in the sum hereinbefore set forth; that the said W. P. Holland is now insolvent.

VI.

Plaintiff further shows that for more that twenty years prior to June 19th, 1922, the said W. P. Hol-

land was connected with a banking institution formerly existing in this county known as the Planters Bank, Clarksdale, Mississippi, and that for more
5 than twelve years prior to the year 1920, said W. P. Holland was the President of said bank, and as such President, had sole charge of the affairs and operation thereof; plaintiff further shows that the said Holland in his managing and control of the affairs of the said bank, and of his own affairs, was a highly successful business man;

Plaintiff further shows that during the year 1920, and for many years prior thereto, the said Holland owned or controlled a majority of the stock in the Planters Bank, which stock, plaintiff alleges on information and belief, to have been highly valuable stock at said time, worth upon the open market in excess of Three Hundred Dollars ($300.00) per share, and the holdings of the said Holland being worth upon the market in excess of Fifty Thousand Dollars ($50,000.00).

Plaintiff further shows that in addition thereto the business activities of the said Holland in connection with the operation of said Planters Bank, he, the said Holland, for many years prior to the year 1920, was engaged in various and sundry investments, stock-operations and other business enterprises not necessary here to detail, except that plaintiff shows that during said period prior to 1920, the said Holland was commonly known as a large operator upon the New York and Chicago Stock Exchange and the New Orleans and New York Cotton Exchanges and the Chicago Grain Exchange, being engaged in operations upon all of such exchanges of buying and selling stock and bonds, cotton and grain and other commodities;

Plaintiff shows that during said period to the year 1920 said W. P. Holland was, as aforesaid, highly successful in his ventures and operations upon the several exchanges mentioned herein and by reason of

his industry and foresight, acquired a vast amount of property which should be subject to the debts of the said Holland by the decree of this Court; plaintiff shows that in addition to the activities of said Holland upon the said exchanges, he was connected with various and sundry local banking and other institutions organized for profit, and in each and all such institutions with which he was connected, he exercised the control thereof; plaintiff further shows that up to said year 1920, the vast majority of the property of the said Holland was invested in the stocks and bonds and other negotiable securities easily transferrable by indorsement and delivery, and that he had not to any appreciable extent, acquired holdings of lands in this and other counties of the Mississippi Delta; plaintiff alleges upon information and belief that at the beginning of said year 1920 the said Holland was an immensely rich man; because as aforesaid, of his industry and ability and that the total aggregate of his holdings and property amounted to more than Three Million Dollars ($3,000,000.00) in excess of his liability which said property as aforesaid, was invested in the stocks of sundry local corporations to some extent, and most largely invested in the stocks of great industrial corporations, whose stocks and bonds are commonly sold upon the said Exchanges; plaintiff is unable to state with any degree of accuracy definitely the amount and number of shares of stock owned by said Holland in the several corporations in which, during the time prior to 1920, he had his said immense fortune invested.

6

VII.

Plaintiff further shows that during the period of time following the opening of the great war in Europe, a period of war inflation opened in this country; that prices of all products and stocks were inflated, and

that after the signing of the Armistice ending hostilities in said War in November, 1918, there swept over this country what is known as the War
7 Boom; plaintiff further shows that the community surrounding the City of Clarksdale was in the midst of said war boom and that prices of lands and the agricultural products produced in the Mississippi Delta advanced to almost unbelievable heights; that during all of said period, the said Planters Bank vastly extended its obligations in and around Clarksdale, Mississippi, and extended its loans to its borrowing customers to tremendous sums; that there was feverish activity in the purchase and resale of lands in the Mississippi Delta; that lands advanced from a value of approximately Fifty Dollars ($50.00) per acre to Two Hundred Dollars ($200.00) and Three Hundred ($300.00) Dollars per acre; plaintiff shows that it was necessary for the said Planters Bank and the said Holland in financing and furnishing the monies necessary to carry out the transactions of its customers in the purchase and sale of lands, to procure monies from foreign sources, including banks located in New York, Chicago, and other Metropolitan cities of this country; and plaintiff shows that said monies were procured by the pledge by said Planters Bank of its credit and bills receivable as collateral thereto, and that said indebtedness of said Planters Bank increased to its said several creditors so that during the first part of the year 1920, the said Planters Bank was indebted to its several creditors in an aggregate amount in excess of Fourteen Million ($14,000,000.00) Dollars; plaintiff further shows that this boom referred to following the great war burst in the first part of the year 1920 and that the conditions became gradually more serious as said year progressed; that said Holland, as the President and as a Director of the said Planters Bank, realized in the fore part of the year 1920, that the said Bank would

not be able to withstand the shock of deflation and realized that he was personally liable to the several creditors of the Bank for the debts due them,
8 because of the mismanagement of the affairs of said Bank; said Holland further realized that unless he should take some false and fraudulent means and procure by some means the transfer of his vast holdings of property, the same would become subjected to sale for the payment of the debts and liabilities as aforesaid of said Holland and especially plaintiff's debt; plaintiff also shows that at said time the said Holland realized that in addition to the sundry liabilities that he then owed to the several creditors of said Planters Bank, that he would be called upon by those banks holding the debts and obligations of the Planters Bank to personally guarantee and underwrite the payment of such obligations and that also in order to keep the said Bank operating during the year 1920 it would be necessary that he pledge his personal credit in order to borrow monies from persons and corporations to be used by him in connection with the affairs of said Bank, and at said time plaintiff alleges that also said Holland realized that unless some steps were taken that his said vast fortune might be consumed in the repayment of such obligations then existing and which might necessarily arise out of the condition then facing the said Holland, but that judgments might and would be taken against him on his indebtednesses.

VIII.

Plaintiff shows that with the circumstances as then existing, the said W. P. Holland and defendant, Florence T. Holland, then and thereupon conceived a scheme and entered into a conspiracy whereby they would transfer and place all of the property then

owned by said W. P. Holland nominally in
9 the name of the defendant, Florence T. Holland, and thereby place the same beyond the reach of your plaintiff and the other creditors of the said Holland.

Plaintiff shows that during the month of January, 1920, the said Holland was the owner of a great number of shares of stock in excess of Thirty Thousand in one of the great industrial corporations of this country known as the Texas Oil Company; that in pursuance of the scheme aforesaid and in order to place the property beyond the reach of the creditors of said Holland, he, the said Holland, caused to be sold upon the said New York Stock Exchange a great number of his shares of stock in the said Texas Oil Company, and plaintiff shows that during the month of February, 1920, he, the said Holland, received from the proceeds of the sale of his stock in the said Texas Oil Company an aggregate amount of One Million One Hundred Thirty-three Thousand Four Hundred Ten and 34/100 Dollars ($1,133,410.34); that said stock as aforesaid was sold through the brokers of the said Holland upon the said New York Exchange and the proceeds of such sale were remitted to the said Holland in Clarksdale, in this County, and were deposited by said Holland in the said Planters Bank to the credit of said Holland; plaintiff shows, however, that this constituted relatively a small part of the vast estate of said Holland.

Plaintiff further shows that the manner and means of the transfer of the said part of said property of the said Holland from himself to the defendant, Florence T. Holland, consisted in this:

That the said Holland did cause the said Planters Bank to transfer and sell sundry of its bills receivable, being the notes and obligations of its customers, payable to it, ostensibly to the defendant, Florence T.

Holland, but that the purchase price of said notes would be paid by the said W. P. Holland. So plaintiff shows that on May 19th, 1920, as an instance of the effectuation of said scheme and conspiracy, the said Holland caused the said Planters Bank, he being the President thereof, and in control of the affairs of the same, ostensibly to transfer and sell to the defendant, Florence T. Holland, sundry of the said bills receivable of the said Bank of the value of and the purchase price of One Hundred Eighty-one Thousand Two Hundred Forty-nine and 36/100 ($181,249.36) Dollars; that likewise on May 20th of said year said Holland caused the said Bank likewise obstensibly to sell to the said Florence T. Holland sundry other bills receivable of the said Planters Bank of the value of and at the purchase price of Four Hundred Twenty-five Thousand Seven Hundred Ten and 30/100 Dollars ($425,-710.30); plaintiff shows that the purchase price of said receivables was all paid out of the said account and deposit of the said W. P. Holland, and that the nominal transfer thereof to the name of the defendant, Florence T. Holland, was made with the intent, and has had the effect of, hindering, delaying and defrounding creditors in the collection of the just indebtedness due to them; plaintiff further shows that during the months of July, August, September, October, November, December, of 1920, and during the month of January, 1921, the said Holland continued to cause the said Bank ostensibly to transfer sundry of its bills receivable to the said defendant, Florence T. Holland, for the purpose aforesaid, and under the conditions aforesaid, so that plaintiff shows that during said period of time the said Holland caused the said Bank ostensibly to sell to the said defendant, Florence T. Holland, an aggregate of its bills receivable of One Million Fifty-seven Thousand Five Hundred Eighty-nine and

63/100 Dollars ($1,057,589.63); plaintiff shows that ostensibly the said Florence T. Holland proceeded to collect and/or sell the said receivables and convert the proceeds of the collection and/or sale of the same to her individual use and benefit, but plaintiff shows in equity that the proceeds of said fraudulent transfers and the re-investment thereof and the increment therefrom are subject and liable to the debts and obligations in this Court of the said W. P. Holland.

Plaintiff further shows that although the said W. P. Holland owned comparatively a small amount of real property within the jurisdiction of this Court, that at said time, he, the said Holland, did own several pieces of real property within said jurisdiction, of a highly valuable nature, and that the nominal transfers of said property to the said defendant, Florence T. Holland, was a part and parcel of the said scheme and conspiracy to divest the said Holland of all and every kind and character of property, subject to its debts and obligation, and thereby hinder, delay and defraud the creditors of the said Holland; plaintiff shows that in pursuance of said scheme and conspiracy, on May 1st, 1920, the said W. P. Holland made, executed and delivered to the defendant, Florence T. Holland, a deed of gift, which deed is recorded in Book 63, at page 142 of the land deed records of Coahoma County; Mississippi; plaintiff shows that by said deed of conveyance for the consideration of natural love and affection, the said Holland conveyed to the defendant, Florence T. Holland; the following described property in Coahoma County, Mississippi, to-wit:

That certain tract of land lying along the right bank of the Sunflower River, described as follows: Beginning at a store on the west boundary line of Section Fourteen, eight hundred sixty feet due north

of the corner of Sections Fourteen, Fifteen, Twenty-two and Twenty-three; thence south sixty degrees forty-five minutes east, three hundred forty-six feet to a point, which is the point of beginning
12 of the following described land; thence due north three hundred twenty-five feet to the center of Sunflower River; thence eastwardly following the thread of the center line of said river to the point of intersection of said center line with the north line of Second Street of the City of Clarksdale; thence south seventy-five degrees thirty minutes west two hundred eighty feet to the southeast corner of the Fire Station lot on the north side of Second Street; thence north fourteen degrees and thirty minutes west, thirty feet to the northeast corner of said lot; thence south seventy-five degrees and thirty minutes west and parallel to the north line of said Second Street sixty feet to the northwest corner of said Fire Station lot on the east line of Dorr Avenue; thence north thirty-one degrees and fifteen minutes west along the east line of Dorr Avenue, five hundred feet to a point; thence north forty-two degrees and forty-five minutes west, three hundred feet on the east line of Door Avenue; thence north thirty degrees and fifteen minutes west one hundred forty feet on the east line of Dorr Avenue; thence north one degree and forty-five minutes west two hundred feet to a point on the east line of Riverside Avenue; thence nine degrees and forty-five minutes east one hundred feet to a point on the east line of Riverside Avenue; thence north twenty-three degrees fifteen minutes east one hundred feet to a point on the east line of Riverside Avenue; thence north four degrees and forty-five minutes east five hundred eighty feet to a
13 point on the east line of Riverside Avenue; thence north twenty degrees and forty-five minutes west one hundred feet to a point in the east line of Riverside Avenue; thence north fifty-five de-

grees and fifteen minutes west one hundred feet to a point on the north side of Riverside Avenue; thence north fifty-six degrees and fifteen minutes west one hundred sixty feet to a point on the north side of Riverside Avenue; thence north seventy-seven degrees and fifteen minutes west seven hundred feet to a point on the north side of Riverside Avenue; thence north seventy-nine degrees and fifteen minutes west one hundred feet to a point on the north side of Riverside Avenue; thence north seventy-seven degrees and fifteen minutes west one hundred feet to a point on the north side of Riverside Avenue; thence north seventy-eight degrees and forty-five minutes west one hundred seventy feet to a point on the north side of Riverside Avenue; thence north seventy-eight degrees and fifteen minutes west six hundred feet to a point; on the north side of Riverside Avenue; thence north eighty-one degrees and fifteen minutes west two hundred seventy feet to a point on the north side of Riverside Avenue; thence South three degrees and twenty-five minutes west one hundred twenty feet to a point on the west side of Riverside Avenue; thence south twenty-five degrees and forty-five minutes west, three hundred feet to a point on the west side of Riverside Avenue; thence south thirty-four degrees and forty-five minutes west three hundred feet to a point on the west side of Riverside Avenue;
14 thence south thirty-six degrees and thirty minutes west two hundred forty feet to a stake on the east side of Oakhurst Avenue; which is also the point of beginning. This tract contains 41.51 acres, of which 11.71 acres is situated in Lot Twelve of Section Fourteen, 23.36 acres situated in Lot Thirteen of Section Fourteen, and 6.44 acres situated in Lot Two of Section Twenty-three, all in Township Twenty-seven, Range Four, West.

All Lots Six, containing 38.41 acres and all that part of Lot Nine, lying north of the center line of Mill

Bayou; containing 29.21 acres, except five acres heretofore conveyed to Coahoma County on May 20, 1929, by deed recorded in Book 24 at page 301 of the Record of Land Deeds in the office of the Chancery Clerk of said County at Clarksdale, Mississippi, and except three acres conveyed to M. K. Wilberger by deed dated November 21st, 1919, and not yet of record, which said three acres is described as follows: Beginning at an iron stake in the line dividing Sectional Lots Eight and Nine, about two hundred feet north of the center line of Mill Bayou; thence north along the dividing line between said Lots Eight and Nine a distance to give a frontage of two acres to an iron stake; thence west a distance to give a depth of 1½ acres to an iron stake; thence south parallel to said dividing line between said Lots Eight and Nine a distance to give a length of two acres, to an iron stake; thence east and perpendicular to the dividing line between said Lots Eight and Nine to the iron stake at the point of beginning. The total acreage herein conveyed being 67.62 acres and all being in Section Fourteen, Township Twenty-seven, Range Four West; also three acres in the southeast corner of Lot Nine north of Mill Bayou, in Section Fourteen, Township Twenty-seven, Range Four, West, more particularly described as follows: Beginning at a stake in the line dividing Lots Eight and Nine about two hundred feet from the center of Mill Bayou and north of said Bayou; thence north along the dividing line between said Lots Eight and Nine a distance to give a frontage of two acres to an iron stake; thence west a distance to give a depth of 1½ acres to a stake; thence south parallel to the dividing line between Lots Eight and Nine aforesaid to a stake; a distance to give a depth of two acres; thence east and perpendicular to the dividing line between Lots Eight and Nine to the point of beginning; also the following described property situate in the

City of Clarksdale, County and State aforesaid, to-wit, Lot One and the eastern half of Lot Two; Lot Six and the eastern half of Lot Five, all in Block Sixteen in Oakhurst Subdivision, Lots Numbers Three and Four and the East Half of Lot Five and the West Half of Lot Two of Block Sixteen of Oakhurst Subdivision. Lots Fifteen, Sixteen, Seventeen and Eighteen in Block Fifteen in the Dolan and Peacock Oakhurst Addition. Lots One and Two in Block Nine in the Oakhurst Subdivision.

A copy of which said deed is being filed herewith, marked Exhibit D, and made a part hereof; plaintiff shows that said property is, as aforesaid, highly valuable property, located within the corporate limits of the City of Clarksdale, and was, and is now, of the value in excess of Forty Thousand ($40,000.00) Dollars.

16 Likewise, plaintiff shows that on September 27th, 1920, the said W. P. Holland, in pursuance of the said scheme and for the purpose aforesaid, purported to convey to the said Florence T. Holland by deed recorded in Book 63 at page 328 of said records, the following described land in Coahoma County, Mississippi, to-wit:

Undivided one-half interest in all of Section Seven and the West Half of Section Eight, Township Twenty-six, Range Four, West, and the East Half of the Southeast Quarter of Section One, and the East Half of the East Half of Section Twelve, Township Twenty-six, Range Five, West, commonly known and referred to as the Harahan Plantation, all lying and being in the Second Judicial District of Coahoma County, Mississippi, and comprising in all 1192.71 acres, less 5.02 acres heretofore conveyed as right-of-way of the Yazoo & Mississippi Valley Railroad Company and less eight acres lying south of the county

road running east and west and in the southern extremity of the aforesaid property which is the land claimed by J. W. Cutrer and the land herein conveyed comprising in all 1,179.71 acres, more or less.

A copy of said deed is filed herewith and made a part hereof, marked Exhibit "E" and prayed to be made a part hereof; plaintiff shows that the recited consideration for said conveyance was love and affection, and that the said interest in said property conveyed by said deed was extremely valuable, being of a value in excess of Forty Thousand Dollars ($40,000.00) which said interest plaintiff shows the said defendant, Florence T. Holland, has converted and used for her own use and benefit.

Plaintiff also shows that likewise on April 28th, 1924, in pursuance of said scheme and conspiracy, the said W. P. Holland, by deed recorded in
17 Book 76, at page 441 of said records, sold and conveyed to the said defendant, Florence T. Holland, the following described real property in Coahoma County, Mississippi, to-wit:

Lots numbered One to Ten, inclusive, in Block Eleven of the Dolan and Peacock Oakhurst Addition to the City of Clarksdale, Coahoma County, Mississippi.

A copy of which said deed is filed herewith, marked Exhibit "F" and made a part hereof; plaintiff further shows that the consideration recited in said deed last aforesaid is One Dollar ($1.00) paid, which plaintiff shows was a mere nominal consideration and not a valuable one, and that no consideration whatsoever was paid for said deed.

Plaintiff further shows that the real property sold and transferred by the said W. P. Holland to the said Florence T. Holland by the several conveyances

heretofore mentioned consisted of all the real property within the jurisdiction of this Court owned by said W. P. Holland, but plaintiff shows that in addition thereto, the said W. P. Holland owned sundry promissory notes executed by sundry persons, payable to said Holland and secured by liens upon real property in this County, and that the said Holland in order to completely effectuate his said scheme and purpose, transferred all of said notes to the said Florence T. Holland under circumstances similar to those heretofore recited.

Plaintiff shows that on October 15th, 1921, the said Holland, being then the owner of ten notes of Two Thousand Five Hundred Dollars ($2,500.00) each, executed by W. K. Herrin and W. K. Herrin, Jr., payable to said Holland, and secured by deed of trust recorded in Book "55" at page 402 of said records, entered upon the margin of said record a notation reciting the transfer of said notes to the said defendant, Florence T. Holland, on February 2nd, 1921, which said notation is duly attested by Y. E.
18 Howell, Clerk; plaintiff shows that said notation recited the receipt of value for said assignment, but that as a matter of fact no value was paid, and that said last mentioned assignment aforesaid was merely colorable and for the purpose aforesaid.

Plaintiff also shows that on July 20th, 1921, the said W. P. Holland purported to convey to said Florence T. Holland by deed recorded in Book 13, at page 43 of the Land Deed Records of this County, at Friars Point, Mississippi, to-wit:

One-fourth undivided interest in all that part Sections Five, Six, Seven and Eight, Township Twenty-six, Range Six, lying North of the Yazoo & Mississippi Delta Levee and between the levee and the river, also all that part of the North Half of Section Twelve

and that part of the Southeast Quarter of Section Twelve, west of the Yazoo & Mississippi Levee, and all that part of the south Half of Section Thirteen west of said levee and all that part of the Northeast Quarter of Section Thirteen between the levee and Lake Charles, and all of Southwest Quarter of the Northwest Quarter of Section Thirteen; all of the East Half of Section Fourteen and the Northeast Quarter of the Northwest Quarter of Section Fourteen; all of said lands in Sections Twelve, Thirteen and Fourteen being in Township Twenty-six, Range Seven, West, Coahoma County, also that part of the West Half of Section Twenty-four and that part of the West Half of Section Twenty-five, and that part of Section Thirty-six, except the Southwest Quarter thereof lying west of the right-of-way of the Mississippi Levee; also all of fractional Section Thirty-five and the Southeast diagonal Half of Section Twenty-six, Range Seven, West, Bolivar County,
19 Mississippi, there being embraced in the entire tract 2,200 acres, more or less, being a part of what was formerly known as the Eldridge Plantation, conveyed by United States Lumber & Cotton Company to Oscar Johnston.

A copy of said deed is filed herewith, marked Exhibit "G" and made a part hereof; plaintiff shows that the consideration recited in said deed is the sum of Five Thousand ($5,000.00) Dollars, but plaintiff shows that no such consideration was ever paid and that the same was totally and wholly voluntary and was made as aforesaid with the intent to effectuate the scheme and conspiracy herein outlined.

IX.

Plaintiff shows that in addition to the properties heretofore mentioned, transferred by said W. P. Holland, in pursuance of said scheme and conspiracy, the

said W. P. Holland owned other vast holdings as aforesaid in corporations, evidenced by the shares of stock of said corporations, but plaintiff is not able to state with accuracy the kind and number of sale; plaintiff charges on information and belief, however, that the stocks so owned were of the value in excess of One Million ($1,000,000.00) Dollars and that the same were transferred by simple indorsement and delivery, without consideration, by the said W. P. Holland to the said Florence T. Holland, and thereafter such transfers were entered upon the books of such corporation; plaintiff further shows that it is advised and so believes that at said time, to-wit, during the year 1920, the said W. P. Holland had sundry accounts and deposits with banks and other persons, forms and corporations, non-resident to this
20 State, and that he, in pursuance of said scheme, proceeded to transfer and deliver or assign such account and debts of such firms, persons and corporations nominally to the name of the defendant, Florence T. Holland. All of this was done, as plaintiff alleges in pursuance of the said scheme and conspiracy and with the effect of accomplishing the purpose of hindering, delaying and defrauding creditors in the collection of their just debts and obligations.

Plaintiff shows that by means of the several transfers herein mentioned, that the said W. P. Holland transferred, without consideration, to the defendant, Florence T. Holland, his whole estate, including all of his property, both real, personal and mixed, and thereby, as aforesaid, nominally placed the same beyond the reach of creditors of said W. P. Holland.

X.

Plaintiff shows that since the years 1920 and 1921, the defendant, Florence T. Holland, being nominally

the owner of the property so transferred to her by said W. P. Holland, has nominally proceeded to transact business and invest and re-invest the proceeds of the property so transferred to her. As a matter of truth and in fact, plaintiff alleges that all of such transactions, as will be hereinafter mentioned, have been handled exclusively through the instrumentalities of the said W. P. Holland and that in law, and in this a Court of equity, such transactions have really been W. P. Holland, doing business and transacting business under the assumed name of Florence T. Holland; that in such manner, the said Florence T. Holland has operated upon the stock and grain exchanges heretofore mentioned, has acquired vast amounts of real property in this, and adjoining counties, has become the owner of the large amounts of stocks in the corporation made defendants hereto;

21 that the monies necessary to carry on all of such business operations and transactions were all acquired through the transfers heretofore mentioned and that such transactions hereinafter mentioned have been done and had with the purpose and intent of further hindering, delaying and defrauding creditors in the collection of their just debts and obligations, and that the properties hereinafter mentioned as nominally resting in the name of the defendant, Florence T. Holland, are simply the result of the re-investment of the property of W. P. Holland and are subject to the debts and obligations of the said W. P. Holland. Plaintiff shows that the proceeds of the said fraudulent transfers hereinbefore mentioned have been intermingled and commingled with such property as might have been owned by the defendant, Florence T. Holland, prior to said transfers, in such a manner that it is impossible to segregate one from the other, and plaintiff shows that he is entitled to subject not only the properties transferred by such conveyances hereinbefore mentioned to the

payment of his debts, but in addition thereto, all of the increment and interest and enhancement in value thereof.

Plaintiff shows that with the proceeds of said transfers nominally the defendant, Florence T. Holland, has heretofore purchased, and is now nominally the owner of stock in the defendants, Planters National Bank, of Clarksdale, Planters Trust & Savings Bank, Progressive State Bank, Bank of Hollandale, and Planters Manufacturing Company; plaintiff is unable to state to this Court the exact number of shares or the value thereof, nominally owned by said Florence T. Holland in said corporations, or either of them, but plaintiff alleges on information and belief that the nominal holdings of the said Florence T. Holland in said corporations exceed in value the sum of Two Hundred Fifty Thousand Dollars ($250,000.00).

22 XI.

Plaintiff shows that in addition to the investment of a great majority of the proceeds of the transfers made by said Holland to defendant, Florence T. Holland, in negotiable and transferrable property, a small portion or part thereof has been invested and reinvested in real property located in this, and adjoining counties, of the Mississippi Delta; plaintiff shows that he is not advised of each and every part and parcel of said real property because he shows that the title to some parts is vested in the names of persons or corporations other than the defendant, Florence T. Holland, which vestment of title, was, and is, made by said Holland and said Florence T. Holland with the purpose of intent of further hindering, delaying and defrauding plaintiff and other creditors. Plaintiff shows, however, that the title to all of the real property hereinbefore described is now outstanding in the name of the defendant, Florence T. Holland, with the exception of that property described in the

deed made Exhibit G to this bill of complaint, which plaintiff shows has been nominally sold and conveyed to the defendant, F. M. Owens, and the purchase price secured by vendor's lien and the lien of a deed of trust purporting to be in favor of the defendant, Florence T. Holland, evidenced by two negotiable promissory notes of said Owens, payable to said Florence T. Holland of the aggregate principal amount of Fifty Thousand Dollars ($50,000.00).

Plaintiff shows that in addition to the property hereinbefore described, the following described property is nominally owned by the defendant, Florence T. Holland, in this County, to-wit:

Beginning at southwest corner of North Half of Northwest Quarter of Section Twenty-eight, Township Twenty-eight, Range Three West, running thence north along western boundary of said Section Twenty-eight, and the western boundary line of said Section Twenty-one, to a point where boundary line of said Section Twenty-one intersects the south boundary line of a public road, leading from Clover Hill to Jonestown, thence in a north easterly direction along southerly boundary line of said public road to a point where the said southerly boundary line of the said public road intersects the westerly boundary line of a ditch or canal known as the Swan Lake Lateral Ditch or Canal of Black Lake Drainage District, thence in a southerly direction following the westerly boundary line of said lateral ditch or canal to a point where said line intersects the south boundary line of said section twenty-two, thence in a westerly direction following the southern boundary line of Section Twenty-two, and south boundary line of section twenty-one, to the northeast corner of North Half of Northwest Quarter of Section Twenty-eight, thence in a southerly direction along

the eastern boundary line of the North Half of Northwest Quarter of Section Twenty-eight, to the southwest corner of said North Half of Northwest Quarter of Section Twenty-eight; thence west along south boundary line of the North Half of Northwest Quarter of Section Twenty-eight, to point of beginning, the tract herein conveyed, North Half of Northwest Quarter of Section Twenty-eight, and all that part of Section Twenty-two lying west Lateral Ditch or Canal south of public road, and all that part of section twenty-one lying south of public road, containing in the aggregate 290 acres, more or less, West
24 Half of West Half of Section Twenty-seven and Northeast Quarter and South Half of Northwest Quarter and North Half of Southwest Quarter and Southeast Quarter of Southwest Quarter and West Half of Southeast Quarter and Southeast Quarter of Southeast Quarter of Section Twenty-eight, and Northeast Quarter of Northwest Quarter and North Half of Southeast Quarter of Northwest Quarter and North Half of Northeast Quarter and North Half of the South line of Northeast Quarter of Section Thirty-Three and Northwest Quarter of Northwest Quarter and North Half of Southwest Quarter of Northwest Quarter of Section Thirty-four, Township, Twenty-eight, Range Three, West, containing 880 acres.

Plaintiff further shows that the said W. P. Holland is the President of and in control of the defendant, Planters Trust & Savings Bank, and that he has caused the title to the following described property in this County, to-wit:

All of Sections Twenty-one and Twenty-two; South Half of Southeast Quarter and Southeast Quarter of Southwest Quarter of Section Twenty; North Half of Southwest Quarter and Southwest Quarter of Southwest Quarter of Section Seventeen and West Half

of Northwest Quarter of Section Twenty-seven, all in Township Twenty-seven, North, Range Four, West, and East Half of Section Twenty-four, Township Twenty-seven, Range Five, West,

to be vested in the said defendant, Planters Trust & Savings Bank, trustee. Plaintiff shows that as a matter of truth and in fact, the defendant, Florence T. Holland, claims to own an interest, the exact extent of which is unknown to your plaintiff, in said properties, but which plaintiff alleges on information and belief to be a one-third undivided interest therein and that said interest in said property is one of the results of the re-investment of the property transferred by said W. P. Holland to the said Florence T. Holland;

Plaintiff further shows that nominally the title to the following described property is now vested in the defendant, Florence T. Holland:

West Half of West Half of Southeast Quarter of Section Three, and Northwest Quarter of Northeast Quarter and East Half of Northeast Quarter of Northwest Quarter of Section Ten, all in Township Twenty-six, North, Range Three West, Coahoma County, Mississippi,

and that said property is also a part of the result of said scheme and conspiracy.

XII.

Plaintiff alleges as aforesaid the large part of the property which is the result of the scheme and conspiracy herein outlined to the Court is now invested in property easily and quickly transferrable to bona-fide purchasers for value, and is subject to be placed

beyond the reach of plaintiff; that plaintiff is advised and so charges the facts to be that he is entitled to have the appointment of, and it is the duty of this Court, to order the appointment of a receiver of all of the property, both real and personal and mixed, of the defendant, Florence T. Holland, which said receiver shall be directed to take into his possession and to deal with in accordance with the orders of this Court, all of said property, and that the said Florence T. Holland should be directed by the decree and order of this Court to turn over and deliver to said
26 receiver all of said property;

Plaintiff further shows that he is without remedy at law, and that he is entitled to have the issuance of a writ of temporary injunction, enjoining the said defendant, Florence T. Holland, from making any transfer whatsoever of any part or parcel of her property, pending the outcome and settlement of this litigation; that the said other defendants named herein should be, by said writ of injunction, enjoining from consenting or allowing the transfer of any stock or stocks in the said defendants, or either of them, now nominally outstanding in the name of the defendant, Florence T. Holland.

XIII.

Plaintiff now shows that each and all of said transfers herein mentioned were and are fraudulent and void, and made as aforesaid with intent to hinder, delay and defraud your plaintiff and other creditors, and have had the effect thereof, and should be, by order of this Court, declared to be null and void, and for naught held, and that a decree of this Court be entered, granting and impressing in favor of your plaintiff a lien upon all of the property of the defendant, Florence T. Holland, whether herein specifically

described or not, for the satisfaction of the indebtedness due plaintiff by said defendant, and that a Commissioner of this Court be appointed, with direction to sell said property in the manner provided in said decree for the satisfaction of the indebtedness so due to your plaintiff.

XIV.

Plaintiff would show to the Court that all of the fraudulent transfers heretofore alleged as having been made by the said W. P. Holland to his said
27 wife, Florence T. Holland, and others, were made either after or in anticipation of his liability for indebtedness to plaintiff and other creditors; that the said W. P. Holland had made representations to creditors, upon which the creditors each and all relied; that he, the said W. P. Holland, was worth personally in good and solvent securities and property an amount exceeding $3,000,000.00, over and above any and all indebtedness which he, the said Holland, owed or was liable for to any person; that the creditors of said Holland, relying upon these assurances and believing that the said Holland was solvent, accepted said assurances and extends credit to the said Planters Bank, and to the said W. P. Holland, who was at that time President of the Planters Bank, and extended and renewed indebtednesses for the said Holland and the said Planters Bank on the assurances and representations of the said Holland, when in truth and in fact the said Holland was then about to, or had already transferred, or since transferred every cent in money, stocks, bonds, securities and property to his wife, the said Florence T. Holland, with the intent upon their part, of him, the said W. P. Holland, and her, the said Florence T. Holland, to defeat and defraud the creditors of their just demands and indebtednesses; so that, whereas, be-

fore and during the years 1919, 1920, and 1921, the said W. P. Holland was worth exceeding $3,000,000.00, and was the President of the Planters Bank of Clarksdale, Mississippi, and the said Florence T. Holland was possessed of very little money and personal property and real estate, it now appears that the said Florence T. Holland is exceedingly rich and worth more than $2,000,000.00; that she is now the President of the Planters National Bank, Clarksdale, Mississippi, and owns all the property, money, and assets formerly belonging to the said W. P. Holland, while the said W. P. Holland transacts all of the business of her, the said Florence T. Holland,
28 and is in active charge and the Vice-President of the said Planters National Bank, operating the same for the said Florence T. Holland, and the said W. P. Holland is daily, with acument, shrewdness and business ability, adding to and building up the fortune, which in truth and in fact belongs to him, but is nominally in the name of his said wife, Florence T. Holland, held, as plaintiff alleges, by her in trust for the creditors of W. P. Holland as aforesaid, and in this connection plaintiff alleges that if for any reason it is impossible to identify and show beyond doubt that such of the property now in the hands of the said Florence T. Holland is the exact property in kind and nature as heretofore transferred to her by him, the said W. P. Holland, nevertheless, plaintiff alleges that in equity this Court ought and will impress a lien upon the property of every kind and description in the hands of the said Florence T. Holland, which may be the usufruct, interest, principal, and/or result of any and all property of every kind and character, which may have heretofore, or hereafter may be, transferred by the said W. P. Holland to his said wife, Florence T. Holland, fraudulently as aforesaid.

XV.

The plaintiff alleges that the said W. P. Holland has likewise fraudulently transferred at various times property, money, and/or valuable things to his sister, Mrs. Mary H. Hays, and to his niece, Ruby Hays, having conducted business in the names of both of these ladies for his own benefit and in order to defeat and defraud creditors of the said W. P. Holland of their just debts.

Plaintiff is not familiar with each and every transaction as above set out, as to the exact detail thereof, but here and now alleges and asserts that the said W. P. Holland carried on a large part of his
29 business with Gray & Wilmerding, of New York, the said firm being brokers in New York City, in the name of the said Mary H. Hays, sister, and the said Ruby Hays, niece aforesaid. Plaintiff would respectfully show that the said May H. Hays and said Ruby H. Hays should be made parties hereto for the express purpose of giving an accounting as to what may or may not remain in their hands of the funds of the said W. P. Holland, as to how said transactions were carried on, and what, if any, disposition they made of the said funds and the business carried on in their names and with their consent for the special benefit of the said W. P. Holland, and in order to screen him from the just demands of his creditors and defraud them and defeat their just claims.

Plaintiff alleges that as another step in the fraudulent transfer and conveyance of the property of the said W. P. Holland, the said W. P. Holland, through his said wife, Florence T. Holland, has transferred and conveyed certain property, rights or choses in action to L. C. Townes, a brother of the said Florence T. Holland, in this:

That the Missouri State Life Insurance Company, a corporation of the State of Missouri, filed suit as against the said W. P. Holland for a large amount of money and joined the said Florence T. Holland in said suit, alleging therein as is alleged herein, that the said W. P. Holland, had fraudulently and unlawfully transferred and conveyed to the said Florence T. Holland large amounts of property and money in order to defeat the creditors of the said W. P. Holland, the said cause being No. 4043 on the docket of the Chancery Court of the Second Court District of Coahoma County, Mississippi.

Plaintiff would respectfully show to the Court that during the trial of the said cause and in order to further muddy the waters and transfer and dispose of the property of the said W. P. Holland, and
29½ in order to allow the said Florence T. Holland and the said L. C. Townes, her brother, to fraudulently claim a large indebtedness as against the said W. P. Holland, and thereby defeat the creditors of the said W. P. Holland, the said Florence T. Holland, and the said W. P. Holland, defendants in said Cause No. 4043 on the docket of said Chancery Court, apprehending that a judgment would be gotten by the Missouri State Life Insurance Company, and that the facts alleged in said bill as to the fraudulent conveyance from W. P. Holland to Florence T. Holland would be demonstrated and performed, the said Florence T. Holland, W. P. Holland, and L. C. Townes entered into a fraudulent agreement whereby it was agreed that the said Florence T. Holland should pay in money, or other valuable things, to the Missouri State Life Insurance Company, an amount equal to approximately $75,000.00, and that in turn the said Missouri State Life Insurance Company should transfer to L. C. Townes, a brother of Florence T. Holland, all rights, title and interest in and to the

claim or chose in action of the Missouri State Life Insurance Company against the said Florence T. Holland and W. P. Holland, and thereby creating a claim on the part of the said L. C. Townes as against W. P. Holland and Florence T. Holland to the extent of approximately $30,000.00, with interest, which claim plaintiff alleges is wholly and entirely fictitious and fraudulent, and said agreement further provided that the said L. C. Townes, brother of the said Florence T. Holland, should carry on and dispose of the suit of the Missouri State Life Insurance Company against W. P. Holland and Florence T. Holland No. 4043 on the Chancery Court aforesaid.

Plaintiff alleges that the result of the said fraudulent conspiracy and combination between the said Florence T. Holland, W. P. Holland and L. C. Townes, was this: that the said L. C. Townes, without having paid out any money or other valu-
30 able thing in any way, became seized and possessed of a fictitious and fraudulent claim against the said Florence T. Holland and W. P. Holland, being the claim of the Missouri State Life Insurance Company for approximately $300,000.00, and interest, and that in truth and in fact the said Florence T. Holland purchased the said claim with her own money or other valuable thing, and agreed that the said L. C. Townes should be the ostensible owner thereof, so that in case creditors of the said W. P. Holland should sue him and the said Florence T. Holland, that the said L. C. Townes could appear to be the owner of a large claim of more than $300,000.00 which would be prior in point of time to the claim of any other creditor suing thereafter.

Plaintiff alleges that the suit of the Missouri State Life Insurance Company was founded on a judgment procured as against the said W. P. Holland by the

Missouri State Life Insurance Company on the 27th day of January, 1923, for the sum of $240,524.02, with interest thereon at the rate of 6% per annum, said cause being No. 111 at law, in the United States Court for the Delta Division of the Northern District of Mississippi, and that the effect of said agreement is that the said L. C. Townes appears to be the owner of said judgment, as well as the right of action in Cause No. 4043, but plaintiff alleges that in truth and in fact he is now the owner thereof but that the result of the said fraudulent transactions was that W. P. Holland, with his own money, in the name of his wife, purchased the judgment against himself for himself, and for his own use.

Wherefore, the plaintiff alleges that the said judgment now enrolled on the judgment roll of the Missouri State Life Insurance Company against W. P. Holland, procured originally in the United States Court for the Delta Division of the Northern District of Mississippi, ought and should be canceled by order of this Court, and that the said L. C. Townes should be declared not to be the owner thereof or to have
31 any interest therein, and the said Florence T. Holland should be declared by decree of this Court not to be the owner thereof, or to have any interest therein, and, further that the judgment itself was canceled and wiped out by the fraudulent sale and transfer thereof as set forth above.

Wherefore, plaintiff prays that the said L. C. Townes be also summoned herein as a party hereto to answer under oath these allegations and the interrogatories attached.

XVI.

The premises considered, plaintiff prays for the issuance of summons to all of the defendants hereinbefore

mentioned, viz: Florence T. Holland, Planters National Bank of Clarksdale, Peoples Bank of Jonestown, Planters Trust & Savings Bank of Clarksdale, Miss., Bank of Lula, Lula, Miss., Progressive State Bank, Tutwiler, Miss., Bank of Hollandale, Hollandale, Miss., Paul Holland, Mary H. Hays, Ruby Hays Thompson, Planters Manufacturing Company, Clarksdale, Miss., Bank of Ruleville, Ruleville, Miss., F. M. Owens, and L. C. Townes, commanding them to appear at the time fixed by law before this Honorable Court then and there to plead, answer or demur hereto, under oath, the oath or oaths to any answer or answers and the interrogatories propounded and herein filed are hereby expressly required.

XVII.

Plaintiff prays that the defendants may answer under oath fully and completely all the interrogatories attached hereto and file the answers to said interrogatories as a part of their answer to this bill.

XVIII.

Plaintiff prays that in addition to the personal judgments herein prayed for that all of the property herein mentioned and referred to, whether fully described herein or not as having been transferred, assigned, sold and/or delivered by the said W. P. Holland to any other person may be held by this Court to have been so transferred, fraudulently, and such transfers to be void in toto, and that a lien be impressed on all of said property wherever the same may be found for the payment of the judgments against the said W. P. Holland; that wherever the said property cannot be located that

the same is shown to have gone into the personal estate of any of the defendants that the personal judgments be given by this Court against such defendants for the full amount of money, property or other things so fraudulently received by them.

XIX.

Plaintiff further prays that a preliminary injunction may issue from this Honorable Court restraining the defendants and all of them, their agents, attorneys, employees, etc., from in any way selling, assigning, transferring and/or disposing in any way of any of the money, property, stocks, bonds and/or other things alleged to have been transferred to him or them by the said W. P. Holland either directly or indirectly until further order of this Court.

XX.

And plaintiff prays for other, further and general relief in this cause as to equity may seem meet, and as the case may require, and as in duty bound plaintiff will ever pray, etc.

MAYNARD, FITZGERALD
& VENABLE,
Attorneys for Plaintiff.

33 State of Mississippi,
Coahoma County.

This day personally appeared before me, the undersigned duly qualified and acting Notary Public in and for the County and State aforesaid, Gerald Fitzgerald, who having been by me first duly sworn states on oath that he is solicitor, agent and attorney-in-fact for the within named plaintiff in the foregoing bill of com-

plaint, and that within the knowledge of affiant and affiant's principal, all the matters and facts set forth in the foregoing bill of complaint are true as therein stated, and those set forth on information and belief affiant and his principal believe to be true.

GERALD FITZGERALD.

Sworn to and subscribed before me, this 22nd day of June, 1928.

E. J. MULLEN,
Notary Public.

---

34 INTERROGATORIES TO BE ANSWERED BY THE DEFENDANT FLORENCE T. HOLLAND.

1. Give the date of your marriage.

2. State what property, if any, you had at said time, giving the nature, character, location, description and value thereof.

3. State in detail what property you acquired from your mother and/or father or either prior to their death, giving date, description, character, location and approximate value of such property, real or personal?

4. If you have stated that you acquired any property from your mother and/or father, state whether or not you have sold said property, and if so, state to whom, when, nature of the instrument executed transferring same, consideration, how evidenced and whether or not paid.

5. If you have stated that any of the property which you may have acquired from your father and/or mother was sold, state how you invested the proceeds, if any, giving character and investment, date acquired, and whether you now possess such property.

6. State what property, if any, you have ever received from the estate of your father and/or mother, giving the kind, the nature of such property, including description thereof, the value, and extent when you received and what you did with it?

7. Attach to your answer copies of your income tax report to the Internal Revenue Commissioner of the United States, for the years 1918 and 1928, inclusive.

8. Attach to your answer a complete detailed financial statement of your affairs as of January 1st of each of the years 1919 to 1928, inclusive, stating in detail the kind, character and nature of all of your property, where located and the value thereof.

35 9. State what property you purchased during the years 1919, 1920, 1921, 1922, from whom you purchased it, when purchased, price paid, location, and description of the property.

10. Please state what banks, brokerage houses, or other firms, persons or corporations with whom you have done business of more than $1,000.00 in value since January 1st, 1919, and also give a complete statement of all of your transactions with such person or firms since 1920, showing deposits and withdrawals of deposits for all of said period of time.

11. Attach to your answer to this interrogatory copies of the monthly bank statements rendered to you by such banks and other persons, including brokers, for said period of time.

12. State the amount of cash money you had on hand on each of the months of the years 1920, 1921,

1922, where the same was deposited, and if deposited in Banks, give the name of the Banks, location thereof and how the money was withdrawn, when and for what purpose.

13. State whether or not you have purchased any notes or bills receivable from the Planters Bank, Clarksdale, Miss., during the years 1920, 1921 and 1922, and if you state that you did purchase any notes or bills receivable from the said bank, state the purchasing price paid by you therefor, and state what you did with each of said notes, and what money you have collected thereon.

14. Please state every transaction involving the purchase and the sale of stocks and bonds made by you during the years 1918 and 1928, inclusive. Give the amount and value of stocks, giving the name of the firm of brokers with which the transaction was made, the purchase price thereof and state what you have done with such stocks and/or bonds.

36

15. State what firms of stock, grain, or cotton brokers you did business with during each of the years of 1918 to 1928, inclusive, showing the years in which you did business with each of the brokers mentioned by you in this interrogatory, and attach copy to your answer of the accounts with each of said brokers.

16. State the amount of and when you subscribed for stock in the Planters Bank, Clarksdale, Miss., and the other Banks mentioned in the original Banks, how much stock you own in Bank now, whether direct or indirect, that is to say whether in your own name or in the name of any other person for you. If you state that you subscribed for stock in said Bank

and paid for same, state how you paid the money thereon and state the present location of the stock certificate now owned by you in the said Planters National Bank, and said other Banks.

17. Please give a list of stocks, bonds, real estate, money, and/or other valuable things owned by you, whether direct or indirect, at the date of the filing of this bill. State what business you were engaged in prior to the year 1920. Give the details, the nature, character, location and description of investment of any money or property you then owned.

18. If you have a copy of a financial statement made by you during the years 1918, 1919, 1920, please attach the same to your answer hereto.

19. State in detail the business or businesses in which you are now engaged. State what corporations, banks, or companies, firms you now own stock in, giving the amount, value and number of shares in each company or corporation.

37 20. Please attach to your answer full and complete copies of each written instrument appertaining to the settlement by you of the case of Missouri State Life Insurance Company vs. W. P. Holland and Florence T. Holland, et al., No. 4043 on the docket of the Chancery Court of the Second Court District of Coahoma County, Mississippi, giving also a detailed account of your settlement with said Company, what you paid, or agreed to pay, and the exact terms of said settlement.

21. Please state why and for what purpose and for what consideration you allowed the judgment of the Missouri State Life Insurance Company against W. P. Holland, procured on the 27th day of Janu-

ary, 1923, for the sum of $240,524.02, being cause No. 111 at Law in the United States Court for the Delta Division of the Northern District of State of Mississippi, to L. C. Townes, stating what consideration the said L. C. Townes paid or agreed to pay therefor, and each detail in regard to said purchase.

22. State what property, stocks, bonds, money and/or other valuable thing you have disposed of within the past 12 months, the manner of disposal, what price you received therefor, and what you did with the proceeds, if any, including any gifts which you may have made, settlements, or trusts, either for yourself or the benefit of any other person, giving full details thereof.

23. If you have a personal set of books, will you please produce the same for inspection and/or copies thereof by the plaintiff.

24. Please state who has kept these books and if they are correctly kept in due course of business, and if the entries thereon were made at the date shown on said books.

25. Please state what, if any, money, correspondence, or other valuable thing, real, personal or mixed, has been transferred to you by W. P. Holland from January 1st, 1920, up to and including the
38 date of answering this question.

26. During the year 1920 you purchased from the Planters Bank of Clarksdale, Miss., certain bills receivable of said Bank. Please state how you paid for these bills receivable, whether by checks, or otherwise, giving the date of the check, the amount thereof, and upon what Bank you drew the same, and if you have the original canceled checks produce the same and attach hereto.

27. Please state where you got the money which was deposited to your name in the Planters Bank of Clarksdale, Miss., during the year 1920, from whose account the same was transferred, by check or otherwise.

---

39 INTERROGATORIES TO BE ANSWERED BY EACH OF THE DEFENDANTS, PLANTERS NATIONAL BANK OF CLARKSDALE, PLANTERS TRUST & SAVINGS BANK, CLARKSDALE, PROGRESSIVE STATE BANK, BANK OF HOLLANDALE, PLANTERS MANUFACTURING COMPANY, BANK OF RULEVILLE, BANK OF LULA AND PEOPLES BANK OF JONESTOWN.

No. 1. State the number and par value of the shares of stock which appear by your books to be owned by Florence T. Holland, giving the date or dates of the issuance of such certificates of stock, the number thereof and the number of shares represented by each certificate.

No. 2. State, if you know, the present location of such certificate or certificates.

No. 3. Please prepare a list of the number and par value of the shares of stock in your corporation which appear by your books to have been owned by W. P. Holland and/or Florence T. Holland at any time, giving the date or dates of issuance of said certificate of stocks, the number thereof, and the number of shares represented by each certificate, when and to whom transferred, if transferred; and if not transferred, so state.

40 INTERROGATORIES TO BE ANSWERED BY MARY H. HAYS, RUBY H. THOMPSON AND PAUL HOLLAND.

No. 1. State when, if at all, during the years 1918 to 1927, inclusive, W. P. Holland and/or Florence T. Holland, conducted or carried on any business, or the purchase of stocks, bonds, grain, cotton and/or other commodity in your name.

No. 2. If such business was carried on in your name, please state whether or not you gave a power of attorney to them or either or them to do so, and give full details of every transaction, if you know about it.

No. 3. If you state that you do not know the details at all, please state if it is not true that such business was carried on in your name and with your consent, and under power of attorney from you, attaching, if you have it, a copy of the power of attorney.

No. 4. Please attach to your answers here a full and complete copy of all business transactions carried on with you by Gray & Wilmerding, brokers of New York City, during the years 1919 to 1927, inclusive, showing the dates of each transaction, its profit and loss, the amount of share or other commodity purchased and/or sold.

No. 5. Please give a financial statement, including all your property, money, and/or other valuable things, real or personal, belonging to you during the years 1918 to 1927, inclusive.

No. 6. If you made Income Tax Report to the Government of the United States, and/or the State of Mississippi, for the years mentioned, viz: 1918 to 1927, inclusive, please attach copy thereof, and if you did not make such report, please state how you accounted for the profits and/or losses incurred by you in the purchase of stocks, bonds, grain, cotton and/or other commodities through the brokers, Gray & Wilmerding, and others, during the years 1918 to 1927, inclusive.

41 INTERROGATORIES TO BE ANSWERED BY L. C. TOWNES.

No. 1. It appears by agreement with the Missouri State Life Insurance Company in the case of Missouri State Life Insurance Company vs. W. P. Holland, et al., No. 4043 on the docket of the Chancery Court for the Second Court District of Coahoma County, Mississippi, that a certain judgment therein mentioned, being judgment of the Missouri State Life Insurance Company vs. W. P. Holland, procured on the 27th day of January, 1923, for $240,524.02, in the District Court of the United States for the Delta Division of the Northern District of Mississippi, being cause No. 111 at Law therein, was transferred and/or assigned to you.

No. 2. Please state what consideration you paid therefor, the manner and form of said consideration, and attach hereto any check or draft that you issued in payment thereof, and give full detailed account of said assignment and/or purchase by you of said judgment.

No. 3. Also attach to your answer full and complete copies of the originals of all written instruments

received or given by you in settlement of Cause No. 4043 aforesaid, or in the purchase of the judgment in Cause No. 111 aforesaid.

No. 4. Please state whether or not at any time Florence T. Holland or W. P. Holland, have purchased and/or sold stocks, bonds, grain, or cotton futures, in your name, and not for your own benefit.

No. 5. Please state what, if any, business or other transaction has been carried on in your name either by W. P. Holland or Florence T. Holland, giving full details of such business, an accurate financial accounting thereof, including the years 1918 to 1927, inclusive.

42 No. 6. In regard to the transfer to you by the Missouri State Life Insurance Company of the judgment in cause No. 4043 on the docket of the Chancery Court of the Second Court District of Coahoma County, Mississippi. Please state what, if any, action you have taken therein with reference to enforcing the said judgment and what, if any, action you have taken in Cause No. 4043 with regard to winding said suit up.

No. 7. Please produce and file herewith every agreement in writing of every kind or character entered into by you with Florence T. Holland or any other person, showing any transfer at present or in the future by you of the chose-in-action alleged to have been purchased by you or showing that you hold the same in trust for Florence T. Holland and/or any other person.

No. 8. Please state what agreement, verbal or written, or otherwise, you have or had with Florence T. Holland or W. P. Holland or any other person

that you should be repaid or reimbursed for any sums advanced by you in the purchase of the above mentioned judgment described in Suit No. 4043 on the Chancery Court docket, Second District Coahoma County, Mississippi, and please state if your agreement with the Missouri State Life Insurance Company conveyed and set forth the entire agreement as between yourself and all other persons in said suit.

No. 9. If you have stated that you paid any sums of money for the purchase of said judgment please state where you got the same, out of what account you drew it, and produce the bank account showing the deposit and withdrawals of said bank account for two months previous to the purchase of said judgment up to and including this time.

43 No. 10. Please state if you have any agreement of any kind, either verbal or in writing, that you will be reimbursed in any way for your purchase of said judgment, or that you hold the said judgment for the benefit of any other person than yourself.

No. 11. Who first approached you with reference to the purchase of the above named chose in action, and state specifically what conversation was had with you with reference thereto, in what way you were promised a consideration for your purchase of said judgment or chose in action.

44 EXHIBIT A.

The Chemical National Bank of New York, Plaintiff,
vs. No. 153-Law.
W. P. Holland, Defendant.

This day came this cause for hearing, came the plaintiff in person and by its attorney, but the de-

fendant being called came not, but so to do did wholly make default; and it appearing that the defendant has been duly and legally summoned by personal service of process more than sixty days before the first day of this term of Court, and has failed to appear, and has failed to plead, answer or demur to the declaration herein filed against him;

It is, therefore, the judgment of the Court that the plaintiff do have judgment by default against the defendant; and that the plaintiff, the Chemical National Bank of New York, a corporation, do have and recover of and from the defendant, W. P. Holland, the sum of Thirty Thousand Six Hundred Thirty-two and 78/100 Dollars ($30,632.78), together with all costs of Court, for all of which execution may issue.

This October 20th, 1925.

(Signed) E. R. HOLMES,
District Judge.

(Recorded Minute Book 4 at page 36, United States District Court at Clarksdale, Mississippi.)

45 EXHIBIT B.

The President of the United States.

To the Marshal of the Northern District of Mississippi—Greeting:

We command you, that of the goods and chattels, lands and tenements of defendant W. P. Holland, late of your District, you cause to be made the sum of Thirty Thousand Six Hundred Thirty-two Dollars and 78 Cents, which

The Chemical National Bank of New York lately, in the District Court of the United States, for the Delta Division of the Northern Judicial District of

Mississippi, has recovered against him for damages which was sustained by reason of the non-performance of a certain promise and assumption by said defendant to the said Plaintiff made, with interest on the said sum, at 6 per centum per annum from the 20 day of Oct., 1925, until paid; also, the sum of Eighteen Dollars and Fifty-five Cents, for Court costs by..... about said suit, in that behalf expended, whereof the said defendant was convicted as appears to us of record. And that you have the said moneys before the Judge of the District Court of the United States, for the Delta Division of the Northern District of Mississippi, at Clarksdale, on the Third Monday in October next; to render to the said plaintiff for $30,-651.25 damages and costs aforesaid, and have then and there this writ.

Witness the Honorable Edwin R. Holmes, Judge of said Court, and the seal thereof, at Clarksdale, the 11th day of June, A. D. 1928, and the 152 year of American Independence.

J. J. VANCE,
Clerk,
CELIA COOK DAVIS,
(Seal) Deputy Clerk.

The following return appears on the back of said writ:

"Received this writ at Clarksdale, Miss., on June 11, 1928. After diligent inquiry I failed to find any real or personal property belonging to W. P. Holland
in which levy could be made upon and out
46 of which the money could be made.

This the 18th day of June, 1928.

CHARLES R. LIGON,
United States Marshal,
By G. E. COOK,
Deputy."

(Copy)

Bill of Costs.

Filing Declaration or Bill of Complaint.....	.10
Issuing Process, Certificates and Seals	1.20
Entering Return and Filing	.25
Entering Verdict and Judgment	5.00
Attorney's Tax Fee	10.00
Marshal's Fees	2.00
Total	$18.55

On back of Writ:

No. 153 L.

To Oct. Term, 1928.

Chemical Nat'l Bank
vs.
W. P. Holland.

Judgment	$30,632.78
Clerk	6.55
Attorney	10.00
Marshal	2.00

MAYNARD, FITZGERALD & VENABLE,
Attorney.

Returned and filed June 18, 1928.
J. J. VANCE,
Clerk,
CELIA COOK DAVIS,
D. C.

47 EXHIBIT C.

Assignment.

This assignment, made and entered into this the 31st day of May, 1928, by and between the Chemical

National Bank of New York, a corporation, party of the first part, and Sterling B. Cramer, party of the second part, witnesseth:

That for and in consideration of One Hundred ($100) Dollars cash in hand paid to the party of the first part by party of the second part, the receipt of which is hereby acknowledged, and for other good and sufficient valuable considerations to the party of the first part accruing from the party of the second part, party of the first part does by these presents bargain, sell, assign, transfer, set over and deliver unto party of the second part that certain judgment recovered by party of the first part in the District Court of the United States for the Delta Division of the Northern District of the State of Mississippi, in cause No. 153 at Law, on the docket of the said Court, in which the party of the first part recovered of and from W. P. Holland, of Clarksdale, Mississippi, the principal sum of Thirty Thousand Six Hundred Thirty-two and 78/100 ($30,632.78) Dollars, said judgment bieng rendered on the 20th day of October, 1925, and appearing of record in Minute Book 4 at page 36 of the Minutes of said Court.

The Clerk of the said Court is hereby authorized and directed to note this assignment of record and to make such notations on his docket and to file this assignment and/or record the same in such records and proceedings as is by law required for the full and complete transfer and assignment of said judgment.

Witness the hand of the party of the first part this the day and year first above written.

Triplicate of original.

CHEMICAL NATIONAL
BANK OF NEW YORK,
By F. K. HOUSTON,
Vice-President.

48 State of New York,
County of New York, ss.

This day personally appeared before me the undersigned, a duly qualified and acting notary public in and for the County and State aforesaid, Frank K. Houston, having been by me first duly sworn, stating on oath that he is a Vice-President of the Chemical National Bank of New York, a corporation; that as such officer of said corporation for and on its behalf with full authority so to do, he signed, sealed and delivered the foregoing instrument on the day and year therein mentioned, as a voluntary act and deed of said corporation.

Witness my hand and official seal this 31st day of May, 1928.

CLARENCE A. ENGLAND,
Notary Public, Westchester County, N. Y.

Co. Clerk's No. 136.
Register No. 0-95.
Kings Co. Clerk's No. 53.
Register's No. 162.

Commission expires March 30, 1930.

49 EXHIBIT D.

Deed of Gift.

W. P. Holland
to Deed of Gift.
Florence T. Holland.

The State of Mississippi,
Coahoma County.

Be it known that for and in consideration of the natural love and affection I have for and do bear to-

wards Florence Holland, my wife, I hereby grant, bargain, sell and convey and warrant to her and to her heirs and assigns forever, the following described property, situated in the County of Coahoma, State of Mississippi, to-wit:

That certain tract of land lying along the right bank of the Sunflower River described as follows: Beginning at a stone on the west boundary line of Section Fourteen (14) 860 feet due north of the corner of Sections Fourteen, Fifteen, Twenty-two and Twenty-three (14, 15, 22 and 23), thence South 60 degrees, 45 minutes East, 346 feet, to a point which is the point of beginning of the following described land, thence due north 325 feet to the center of Sunflower River; thence eastwardly following the thread of the center line of said river to the point of intersection of said center line with the North line of Second Street of the City of Clarksdale; thence South 75 degrees, 30 minutes West, 280 feet to the Southeast corner of the Fire Station Lot on the North side of Second Street; thence North 14 degrees and 30 minutes West, 30 feet to the Northeast corner of said Lot; thence South 75 degrees and 30 minutes West and parallel to the North line of said Second Street 60 feet to the Northwest corner of said Fire Station Lot on the East line of Dorr Avenue; thence North 31 degrees and 15 minutes West along the East
50 line of Dorr Avenue; thence North 30 degrees and 15 minutes West 140 feet on the East line of Dorr Avenue; thence North 1 degree and 45 minutes West 200 feet to a point on the East line of Riverside Avenue; thence 9 degrees and 45 minutes East 100 feet to a point on the East line of Riverside Avenue; thence North 23 degrees 15 minutes East 100 feet to a point on the East line of Riverside Avenue; thence North 4 degrees and 45 minutes East 580 feet to a point in the East line of Riverside Avenue; thence

North 20 degrees and 45 minutes West 100 feet to a point in the East line of Riverside Avenue; thence North 55 degrees and 15 minutes West 100 feet to a point on the North side of Riverside Avenue; thence North 56 degrees and 15 minutes West 160 feet to a point on the North side of Riverside Avenue; thence North 77 degrees and 15 minutes West 700 feet to a point on the North side of Riverside Avenue; thence North 79 degrees and 15 minutes West 100 feet to a point on the North side of Riverside Avenue; thence North 77 degrees 15 minutes West 100 feet to a point on the North side of Riverside Avenue; thence North 78 degrees and 45 minutes West 170 feet to a point on the North side of Riverside Avenue; thence North 78 degrees and 15 minutes West 600 feet to a point on the North side of Riverside Avenue; thence North 81 degrees and 15 minutes West 270 feet to a point on the North side of Riverside Avenue; thence South 3 degrees and 25 minutes West 120 feet to a point on the West side of Riverside Avenue; thence South 25 degrees and 45 minutes West, 300 feet to a point on the West side of Riverside Avenue; thence South 34 degrees and 45 minutes West 300 feet to a point on the West side of Riverside Avenue; thence South 36 degrees and 30 minutes West 240 feet to a stake on the East side of Oakhurst Avenue, which is also the point of beginning. This tract contains 41.51 acres, of which 11.71 acres is situated in Lot 12 of Section Fourteen (14), 23.36 acres situated in Lot 13 of Section Fourteen (14) and 6.44 acres situated in Lot Two (2) of Section Twenty-three (23). All of Township 27 North, Range 4 West.

51

Also Lot Six (6) containing Thirty-eight and 41/100 acres (39.41) and all that part of Lot Nine (9) lying North of the center line of Mill Bayou, containing Twenty-nine and 21/100 acres (29.21) except 5 acres heretofore conveyed to Coahoma Coun-

ty, in May 20th, 1909, by deed recorded in Book 24, 301 page, of the Record of Land Deeds in the office of the Chancery Clerk of said County, at Clarksdale, Mississippi, and except Three (3) acres conveyed to M. K. Wildberger by deed dated November 21st, 1919, and not yet of record, which said three acres is described as follows: Beginning at an iron stake in the line dividing Section Lots Eight (8) and Nine (9), about Two Hundred feet North of the Center Line of Mill Bayou, thence North along the dividing line between said Lots Eight (8) and Nine (9) a distance to give a frontage of Two (2) acres, to an iron stake; thence West a distance to give a depth of one and one-half acres (1½) to an iron stake; thence South parallel to said dividing line, between said Lots Eight (8) and Nine (9) a distance to give a length of Two (2) acres, to an iron stake; thence East, and perpendicular to the dividing line between said Lots Eight (8) and Nine (9) to the iron stake at the point of beginning. The total acreage herein conveyed being Sixty-seven and 62/100 (67.62) acres, and all being Section Fourteen (14), Township Twenty-seven (27), Range Four (4) West.

Also Three (3) acres in the Southeast corner of Lot Nine (9), North of Mill Bayou in Sec. 14, Township 27, Range 4 West, more particularly described as follows: Beginning at a stake in the line dividing Lots 8 and 9 about 200 feet from the center of Mill Bayou, and north of said Bayou, thence north along the dividing line between said Lots 8 and 9, a distance to give a frontage of two (2) acres, to an iron stake; thence west a distance to give a depth of 1½ acres, to a stake; thence south parallel to the dividing line between Lots 8 and 9 aforesaid, to a stake; a distance to give a depth of two (2) acres; thence east and perpendicular to the dividing line between Lots 8 and 9, the point of beginning.

52

Also the following described property, being situated in the City of Clarksdale, County and State aforesaid, to-wit: Lot One (1) and the Eastern Half of Lot Two (2), Lot Six (6) and the Eastern Half of Lot Five (5), all in Block Sixteen (16), in Oakhurst Subdivision.

Lots Number Three (3), Four (4) and the West Half of Lot Number Five (5) and the West Half of Lot Number Two (2) of Block Number Sixteen (16), of Oakhurst Subdivision.

Lots Fifteen (15), Sixteen (16), Seventeen (17) and Eighteen (18) in Block Fifteen (15) in the Dolan and Peacock Oakhurst Addition.

Lots One (1) and Two (2) in Block Nine in the Oakhurst Subdivision.

"Note"—Three (3) acres excepted in description in Paragraph Two (2), page one (1), was redescribed and conveyed in Paragraph Three (3), this done to make descriptions conform with tracts as they were conveyed to me."

Witness my signature this 1st day of May, 1920.

W. P. HOLLAND.

Witness:

C. G. SNYDER.

53 State of Mississippi,
County of Coahoma.

Personally appeared before me, the undersigned authority in and for the State and County aforesaid, the within named W. P. Holland, who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned and for the purpose therein set forth and for the consideration therein set forth, it being his voluntary act and deed.

Witness my hand and notarial seal this 11th day of May, 1920.

N. B. SESSIONS,
Notary Public.

(Seal)

Recording	$1.00
Cert. & F.	.55
Abst'ing	3.00
	$4.55

Filed for record May 15th, 1920, at 3 o'clock P. M.
Recorded May 15th, 1920.

Y. E. HOWELL,
Clerk.

54 EXHIBIT E.

Quit Claim Deed.

W. P. Holland
to Q. C. Deed.
Florence Holland.

This indenture made by and between W. P. Holland, party of the first part, and Florence Holland, party of second part, witnesseth:

That, for love and affection, the party of the first part does hereby convey and quit claim unto the party of the second part a One-Half undivided interest, being all owned by party of first part, in the following described land situated in County of Coahoma, State of Mississippi, to-wit:

All of Section Seven (7) and the West Half of Section Eight (8) in Township Twenty-six (26), Range Four (4) West; and the East Half of the Southeast Quarter of Section One (1); and the East Half of the East Half of Section Twelve (12) in Township Twenty-six (26), Range Five (5) West, commonly known and referred to as the Harahan Plantation, all lying and being in the Second Judicial District of Coahoma County, Mississippi, and comprising in all 1192.71 acres, less 5.02 acres heretofore

conveyed as a right-of-way to the Yazoo and Mississippi Valley Railroad Company, and less Eight (8) acres lying south of the County Road running East and West and in the Southern extremity of the aforesaid property, which is the land claimed by J. W. Cutrer, and the land herein conveyed comprising in all 1179.71 acres, more or less.

To have and to hold the said premises unto the said party of the second part and unto her heirs and assigns in fee simple forever.

Witness my signature this 27th day of September, 1920.

W. P. HOLLAND.

55 State of Mississippi,
County of Coahoma.

Personally appeared before me, the undersigned Notary Public in and for the State and County aforesaid, the within named W. P. Holland, who acknowledge that he signed and delivered the foregoing deed on the day and year therein mentioned.

Given under my hand and seal this 27th day of Sep., 1920.

N. B. SESSIONS,
(Seal) Notary Public.

Recording	.40
Cert. & F.	.55
Abst'ing	1.20
	$2.15

Filed for record September 30, 1920, at 9 o'clock A. M.

Recorded September 30, 1920, Book 63, page 328.

Y. E. HOWELL,
Clerk.

56 EXHIBIT F.

W. P. Holland
to
Florence T. Holland. Q. C. Deed.

For and in consideration of the sum of One Dollar in cash paid to the undersigned by Florence T. Holland, receipt of which is acknowledged, I hereby convey and quit claim unto the said Florence T. Holland all right, title and interest I may have in those certain lots of parcels of land in the City of Clarksdale, Coahoma County, Mississippi, more particularly described as follows:

Lots Numbered One (1) to Ten (10), inclusive, in Block Eleven (11) of the Dolan and Peacock Oakhurst Addition to the City of Clarksdale, Coahoma County, Mississippi.

Witness my hand this April 28th, 1924.
W. P. HOLLAND.

Revenue Stamps for $.50 attached and canceled.

State of Mississippi,
Coahoma County.

Before me, N. B. Sessions, the undersigned authority within and for the County and State aforesaid, this day personally appeared the within named W. P. Holland, who acknowledged that he signed and delivered the within and foregoing instrument on the day and date therein mentioned.

Witness my hand and seal of office this the 29th day of April, 1924.

N. B. SESSIONS,
(Seal) Notary Public.

Filed for Record May 6, 1924, at 10 o'clock A. M.
Recorded May 6th, 1924, Book 76, page 441.

57	Recording	.20
	C. & F.	.55
	Abst.	1.50
		$2.25

Y. E. HOWELL,
Clerk.

58 EXHIBIT G.

) W. P. Holland
to
Florence Holland. Warranty Deed.

This indenture, made by and between W. P. Holland, party of the first part, and Florence Holland, party of the second part, witnesseth:

That for the consideration of Five Thousand ($5,000.00) Dollars, cash in hand paid, the receipt of which is hereby acknowledged, the party of the first part does hereby convey and warrant unto the party of the second part a one-fourth interest in the following described tracts or parcels of land, to-wit:

All that part of Sections Five (5), Six (6), Seven (7) and Eight (8) lying north of the Yazoo-Mississippi Delta Levee and between said levee and the River, said Sections being in Township Twenty-six (26), Range Six (6) West, Coahoma County, Mississippi; also all of that part of the North half (N½) of Section Twelve (12) and that part of the Southeast Quarter (SE¼) of Section Twelve (12) lying West of the Yazoo-Mississippi Delta Levee; also all

that part of the South Half (S½) of Section Thirteen (13) lying West of the said levee right-of-way, and all that part of the Northeast Quarter (NE¼) of Section Thirteen (13) lying between the levee right-of-way and Lake Charles, and all of the Southwest Quarter (SW¼) of the Northwest Quarter of Section Thirteen (13), all of the East Half (E½) of Section Fourteen (14), and the Northeast Quarter (NE¼) of Section Fourteen (14), all of said land in Sections (12), Thirteen and Fourteen (13 and 14), being in Township Twenty-six (26), Range Seven (7) West, all of the above described land being in Coahoma County, Mississippi. Also all that part of the West Half (W½) of Section Twenty-four (24),
59 and that part of the West Half (W½) of Section Twenty-five (25) and that part of Section Thirty-six (36) except the Southwest Quarter thereof, lying West of the right-of-way of the Mississippi levee; also all of fractional Section Thirty-five (35) and the Southeast diagonal Half of Section Twenty-six (26), Range Seven (7) West, Bolivar County, Mississippi, there being embraced in the entire tract Twenty-two Hundred (2200) acres, more or less, being a part of what was formerly known as the Eldridge Plantation conveyed by the United States Lumber and Cotton Company to the said Oscar G. Johnston.

To have and to hold the said one-fourth interest in the said premises unto the said party of the second part, her heirs and assigns, in fee simple forever.

Witness my signature, this 20th day of July, 1921.

W. P. HOLLAND.

State of Mississippi,
County of Coahoma.

Personally appeared before me, the undersigned Notary Public, in and for the State and County afore-

said, the within named W. P. Holland, who acknowledged that he signed and delivered the foregoing deed on the day and year therein mentioned.

Given under my hand and seal this the 20th day of July, 1921.

N. B. SESSIONS,
(Seal) Notary Public.

$5.00 Rev. Stamp affixed.

Filed for Record the 22nd day of July, 1921, 1 P. M.
Recorded the 22nd day of July, 1921.

Rec. Fee	1.00
Cert. & F.	.55
Abst'ing	2.10

Y. E. HOWELL,
Clerk.
60 By A. C. JOHNSTON, D. C.

Recorded in Land Deed Book 13, page 43.

Indorsed: Filed July 23, 1928. J. J. Vance, Clerk; Celia Cook Davis, D. C.

---

61 SUPPLEMENTARY BILL AND APPLICATION FOR A RECEIVER.

(Title Omitted.)

No. 129 in Equity.

And now comes Sterling B. Cramer, plaintiff in the above styled cause, and reiterating and alleging

all and singular the facts and statement of facts as set forth in the Original Bill filed herein, and praying for all and singular the relief prayed for in the Original Bill herein, and in addition thereto shows the following facts and prays for the relief herein asked for, to-wit:

I.

62 Plaintiff shows to the Court that in the Original Bill in paragraph 12 thereof there is a prayer for the appointment of a receiver of all the property, both real, personal and mixed, of the defendant, Florence T. Holland, and further allegations in said bill are to the effect that all of said property now owned and held by the said Florence T. Holland is in reality the property of W. P. Holland, or has been so inter-mixed and inter-mingled with the property of Florence T. Holland, that it is necessary that a receiver be appointed to take charge of the property, both real and personal, wheresoever situated, in order to preserve the same for the plaintiff.

II.

Plaintiff further shows to the Court that in various ways, in addition to the allegations set forth in the Original Bill, said Mrs. Florence T. Holland, through the agency of her husband, W. P. Holland, has transferred and attempted to hide from the creditors of W. P. Holland and her creditors a large part of the estate of said W. P. Holland which has already been transferred fraudulently to her, an instance of which is this:

As alleged in the Original Bill, under paragraph 15, page 24 thereof, the facts are set forth which show that the Missouri State Life Insurance Company had a large judgment against W. P. Holland recovered in

this Honorable Court, and that thereupon they filed a bill in Cause No. 4043 in the Chancery Court of the Second Court District of Coahoma County, Mississippi, to set aside the very identical fraudulent transfers which are complained of in the Original Bill in this cause, and it is alleged in the Original Bill herein that a fraudulent compromise was reached in the said Cause 4043 by the payment to the said Missouri State Life Insurance Company of approximately $75,000.00 by the said Florence T. Holland, and that the said Florence T. Holland and one Lacey Townes, her brother, and the said W. P. Holland con-
63 spired together to both becloud the record and defeat and defraud creditors by having Lacey Townes, a brother of Florence T. Holland, purchase with the money of W. P. Holland held by Florence T. Holland a judgment of approximately $300,000.00 due to the said Missouri State Life Insurance Company by the said W. P. Holland, so that the said Lacey Townes might appear to be the owner of a judgment of approximately $300,000.00, which should appear to be superior to the judgment of the plaintiff and to the claims of the other creditors of the said W. P. Holland. Plaintiff in said paragraph in the Original Bill alleged that the said Lacey Townes was a mere go-between, that he did not put up any money of his own, but only used the money of Florence T. Holland, and that for said compromise the said Missouri State Life Insurance Company thereupon transferred to the said Lacey Townes its judgment against the said W. P. Holland, and that thereafter the said Lacey Townes held said judgment against the said W. P. Holland, but in reality the said judgment belonged to the said Florence T. Holland for the use and benefit of said W. P. Holland and was merely taken in the name of the said Lacey Townes so as to have the records show that Lacey Townes held a judgment against the said W. P. Holland for a large

amount, which judgment was of date long prior to plaintiff's judgment, and plaintiff further alleged that the holding of said judgment by said Lacey Townes was wholly fictitious and void, but in truth and in fact the said Florence T. Holland, using the money of the said W. P. Holland, had through the instrumentality of the said Lacey Townes purchased the said judgment in reality to protect the said Holland and the property of the said Holland in her hands, and to further defeat and defraud the creditors of the said W. P. Holland and especially plaintiff, who was a creditor. Plaintiff now shows to the Court that since the filing of the Original Bill herein a
64 further fraudulent transfer of said judgment has been made, to further defeat and defraud the creditors and to becloud the record in this:

That the said Lacey Townes, after hearing of the filing of the Original Bill in this cause and becoming afraid of his position therein, demanded that he be relieved from his false position, and thereupon in order to relieve the said Lacey Townes and to further transfer the said judgment and property, the following acts and things were done, as this plaintiff is informed and believes, to-wit:

The first fraudulent compromise with the Missouri State Life Insurance Company in Cause No. 4043, as your plaintiff is informed and believes, occurred in this manner:

One Jake Fink had purchased from the said Missouri State Life Insurance Company a plantation in Coahoma County, Mississippi, on which he owed the Missouri State Life Insurance Company a large amount of money, to-wit: approximately $175,000.00. The said Jake Fink was not coercible and practically insolvent, and the property, which was the only se-

curity the Missouri State Life Insurance Company held for the payment of its $175,000.00, was not worth exceeding $100,000.00. Therefore, the plan was conceived and carried out that instead of Mrs. Holland paying the Missouri State Life Insurance Company in the compromise of its suit against her approximately $75,000.00 in cash that the payment should be made in this way:

Lacey Townes should purchase from the Missouri State Life Insurance Company the said Jake Fink Plantation at and for the price of approximately $175,000.00, though the said property as alleged was not worth exceeding $100,000.00; that the said Lacey Townes should pay $55,000 in cash on said purchase and give his notes amounting to $119,222.00 for the balance of purchase price of said plantation, and that the said deferred payment of $119,222.00 should be evidenced by four (4) notes, to-wit: one note
65 for $7,948.13 due December 1st, 1928, one note for $3,974.07 due December 1st, 1929, one note for $3,974.07 due December 1st, 1929, and one note for $103,325.73 payable in annual installments of $7,948.13 due annually on December 1st, 1930, and thereafter until the same should be fully paid.

Plaintiff is informed and believes that Mrs. Florence T. Holland furnished, through the Planters National Bank of Clarksdale, Mississippi, of which she is the President, or through the Planters Trust & Savings Bank, a savings bank adjunct of the said Planters National Bank, the sum of $55,000 in cash for the use of the said Lacey Townes in purchasing the said Jake Fink Plantation, and in addition thereto the said Florence T. Holland indorsed of the above notes that note for $7,948.13 due December 1st, 1928, and those two other notes for $3,974.07 each due December 1st, 1929, set forth above. In that way the said

Florence T. Holland paid to the Missouri State Life Insurance Company, through the instrumentality of the said Lacey Townes, approximately $70,862.26.

Plaintiff alleged in the original bill, and now here alleges, that the said compromise of said suit and the purchase of the said property by the said Lacey Townes was a fraud in law, and in fact for the purposes aforesaid, and plaintiff is informed and believes that said fraud was carried out by the Missouri State Life Insurance Company deeding to Lacey Townes the said Jake Fink Plantation by deed recorded in Book 15, page 64, of the record of land deeds for the First Court District of Coahoma County, Mississippi, for the consideration of $55,000.00 and $119,222.00 deferred payments as above stated, reference to which is here made, and a copy thereof will be produced at the hearing hereof. Thereupon Lacey Townes executed to the Missouri State Life Insurance Company a deed of trust on said property which is recorded at Book 28, page 555, of said records of land deeds,

66 which said deed of trust secured the balance of the said $119,222 deferred purchase price thereof.

Plaintiff is informed and believes that as a further part of the scheme to carry out the said fraudulent transfer of said judgment and property as aforesaid, an assignment was made by the Missouri State Life Insurance Company of date the 20th day of September, 1927, conveying and assigning to the said Lacey Townes that certain judgment owned by the Missouri State Life Insurance Company as against the said W. P. Holland for approximately $240,000.00 and interest thereon for several years, and thereafter further carrying out said fraudulent scheme and transfer of said judgment and property, plaintiff is informed and believes that the said Lacey Townes requested the said Florence T. Holland and W. P. Holland that he be relieved from further liability and responsibility

therein, whereupon plaintiff is informed and believes the said Florence T. Holland and W. P. Holland caused the said Lacey Townes to execute a deed to the Oakhurst Company, a corporation organized for the use and benefit of the said Florence T. Holland and W. P. Holland, transferring the said property known as the Jake Fink Plantation to the said Oakhurst Company for the consideration of $100,000, the said Oakhurst Company assuming the indebtedness owed by the said Lacey Townes to the Missouri State Life Insurance Company, and releasing the said Lacey Townes from further liability thereon, and plaintiff is informed and believes that the said Lacey Townes also transferred and assigned to the Oakhurst Company, or to some other person or company unknown to plaintiff, the said judgment of $240,000 with interest aforesaid, amounting to $300,000.00 owned by the Missouri State Life Insurance Company and held by it originally against the said W. P. Holland. Plaintiff alleges in regard to the Oakhurst Company that the same was organized on February 20th, 1928, with an authorized capital stock of $300,000; that the incorporators were N. B. Sessions, confidential friend of said W. P. Holland and
67 Florence T. Holland, and cashier of the Planters National Bank, of which Mrs. Florence T. Holland is President; and plaintiff is informed and believes that the said N. B. Sessions put no money of any kind, character or description in said corporation; that the other incorporators of said Oakhurst Company were Lacey Townes, a brother-in-law of the said W. P. Holland and brother of said Florence T. Holland, and plaintiff is informed and believes that the said Lacey Townes put no money of any kind, character or description in the said corporation, and the last incorporator of said corporation was W. D. Garner, the brother-in-law of the said Florence T. Holland and said W. P. Holland, and plaintiff is in-

formed and believes that the said W. D. Garner neither subscribed for stock nor put any money of any kind, character or description in said corporation, but if any money was ever put in said corporation by either one of the three incorporators aforesaid, it was the money of the said Florence T. Holland placed in their hands by the said Florence T. Holland for the purpose of organizing the Oakhurst Company, a corporation, an instrument which the said Florence T. Holland and W. P. Holland might from time to time transfer, fraudulently, such of their property that they could in order to further defeat and defraud the creditors of the said Florence T. Holland and the said W. P. Holland.

As another instance of fraudulent transfers and to further show the utility of the Oakhurst Company to the defendant Florence T. Holland for the purpose of fraudulent transfers, plaintiff now shows that the said Florence T. Holland has converted certain notes and indebtedness belonging to her to the Oakhurst Company, being the Company above mentioned, and especially that property described as follows, to-wit:

North Half of Southwest Quarter and Southwest Quarter of Southwest Quarter of Section 17, South Half of Southeast Quarter and Southeast Quarter of Southwest Quarter of Section 20; all of Section 21; all of Section 22; West Half of Northwest Quarter of Section 27; Northwest Quarter of Northeast Quarter and Northeast Quarter of Northwest Quarter of Section 28; all in Township 27, Range 4 West. East Half of Section 24 in Township 27, Range 5 West in County of Coahoma; and also all of Sections 19, 20 and 21; Lots 1, 2, 3, and 4 of Section 28, and Lot 1 in Section 29, all in Township 26, Range 1 West, Quitman County, Mississippi.

68

Plaintiff alleges that the method and manner of the transfer of her interest in this property to the Oakhurst Company was procured by foreclosures of certain deeds of trust which the said Florence T. Holland either actually and legally owned, and having the property thereunder, transferred and sold by such foreclosures to the Oakhurst Company, thereby hiding the interest of the said Florence T. Holland in said property. The method and manner of the foreclosures are peculiarly known to the said Florence T. Holland and/or her agent W. P. Holland, acting for her in said schemes and devices, and therefore the plaintiff is unable to set out herein in detail the exact nature of such transfers; but plaintiff is informed and believes that the effect of the organization of said corporation and the subsequent transfer to it of the property now owned by it was to defeat and defraud creditors and an attempt to hide from creditors the property and money and the judgment aforesaid held by Florence T. Holland under fraudulent transfers to her from her husband, W. P. Holland.

Plaintiff is further informed and believes that certain notes aggregating $25,000.00 secured by deed of trust recorded in book 55, page 402, being 69 the notes of W. K. Herrin, et al., payable to or made for the benefit of W. P. Holland, et al., were fraudulently transferred on October 15, 1921, by marginal note on the record of said deed of trust. The said page, said transfer being prima facie fraud because not reciting any consideration and being a transfer from W. P. Holland to his wife, Florence T. Holland, made on October 15, 1921, but alleged to be carrying out a transfer sale of said notes theretofore made on February 2, 1921. Plaintiff on information and belief charges the fact to be that the said notes so transferred and assigned by the said W. P. Holland to the said Florence T. Holland was a fraudulent transfer both in law and in fact. In order

to avoid the payment of the plaintiff in his just claim and to defeat creditors generally, the plaintiff is further informed and believes that a further step made in the fraudulent conspiracy to hide said transfer of said note was taken as shown by the records of land sales, mortgages and transfers in Coahoma County, Mississippi, by having the property which was conveyed by said deed of trust and having part of the purchase price of which the said $25,000.00 in notes were given foreclosed by fraudulent foreclosure and sold to the said Oakhurst Company by deed of date, March 13, 1928, recorded at page 8 of book 97 of the Record of Land Mortgages for the Second Court District of Coahoma County, Mississippi, and by various other fraudulent sales, transfers and foreclosures which will be shown by the proof on the trial of this cause. In this manner, plaintiff is informed and believes that more than $50,000.00 worth of property has been fraudulently transferred to the said Oakhurst Land Company, not including the transfer to it of the property known as the Jake Fink property hereinbefore referred to.

Plaintiff is further informed and believes that in the further effort to defeat and defraud creditors and especially the plaintiff, the said Mrs. Flor-
70 ence T. Holland has, through her agent, W. P. Holland, caused to be made upon her books of account which have been kept by and under the direction of her husband, W. P. Holland, certain false fraudulent alterations and entries and the said books mutilated so as to show falsely the results thereof amounting in aggregate to more than $750,000.00, which said changes, mutilations and alterations are apparently of recent nature and all done as the plaintiff is informed and believes for the express purpose and with the intent then and there to hinder delay and defraud the creditors of the said W. P. Hol-

land and of the said Florence T. Holland, who is possessed as aforesaid of all the property originally belonging to the said W. P. Holland.

The plaintiff further alleges upon information and belief that the said Florence T. Holland, through her husband, W. P. Holland, is now engaged in large gambling speculations on the various exchanges and boards of trade throughout the United States, using in such hazardous undertakings the very money and property as collateral security for such operations here involved in this suit. Plaintiff alleges that such gambling speculations are extremely hazardous and that there is great danger that the property involved here in this suit may be lost or again transferred and assigned so that the plaintiff, even though he should recover a judgment herein, will be without remedy.

The plaintiff herein reiterates and alleges all of the facts alleged in the original bill filed herein and again prays for all of the relief asked for therein and herein, and in addition thereto, plaintiff prays that the Oakhurst Company, the corporation aforesaid, be made a party hereto for the purpose of having relief granted against it, the plaintiff prays a judgment may be given against the said Oakhurst Company for any and all property found to be in its hands as
71 illegally and fraudulently transferred to it by any of the defendants hereto and if said property is not in its hands but has been sold and any of said money and/or property mingled with the property of the Oakhurst Company then such judgment be given against it personally as trustee for plaintiff and plaintiff prays that Your Honor grant a process to be issued to the said Oakhurst Company commanding it to appear at a time fixed by law then and there to plead, answer or demur hereto and that upon the final hearing Your Honor give such judgment herein against it and the other defendants as to equity may seem meet and plaintiff prays for general relief.

The plaintiff alleges that on account of the matters and things alleged in the original bill and herein and as will appear from the proof, the plaintiff is entitled to the immediate appointment of a receiver herein to take charge of the estate of the said Florence T. Holland, which estate plaintiff alleges consists principally, as he is informed and believes, of the property fraudulently transferred to her by her said husband, W. P. Holland. Wherefore, plaintiff prays that Your Honor set a day for the hearing of this motion, for the appointment of a receiver and that after due notice given to such of the defendants as may be necessary for said hearing that Your Honor appoint a receiver herein to take charge of and conserve the corpus of this said estate of the said Florence T. Holland for the benefit of the plaintiff and all properties concerned and that said receiver be appointed with all the powers, duties, privileges and authorities usually accorded and given to receivers in such cases and that said receiver be given the power, right and authority to sue for and recover such of the properties as may be found in the hands of persons other than the said Florence T. Holland and the further right to intervene in any and all suits wherein the title to any of said properties is in controversy and do such other acts and things as may be deemed by this Court necessary to conserve the estate and to prevent further transfers, assignments thereof or losses by speculation and gambling.

72

Plaintiff attaches hereto certain interrogatories which it prays may be answered under oath by the several parties defendant within the time required by law.

Respectfully submitted,
MAYNARD, FITZGERALD
& VENABLE,
Attorneys for Plaintiff.

State of.....
County of.....

This day personally appeared before me, the undersigned, a duly qualified and acting Notary Public in and for the County and State aforesaid, Gerald Fitzgerald, agent and attorney for S. B. Cramer, plaintiff, who, having been by me first duly sworn, states on oath that the matters and facts alleged in the foregoing supplemental bill and application for a receiver, are true as therein stated, and that those matters and facts alleged on information and belief affiant believes to be true.

Affiant further states that his principal lives more than 500 miles from the place of trial of this cause and hence is not present to make this affidavit personally but that affiant is authorized to make said affidavit as agent and attorney for the plaintiff.

GERALD FITZGERALD.

Sworn to and subscribed before me, this the 18th day of December, 1928.

E. J. MULLEN,
Notary Public.

(Seal)

73 INTERROGATORIES TO BE PROPOUNDED TO PRESIDENT OF THE OAKHURST COMPANY.

No. 1. Please produce stock books and all books of accounts, ledgers, and cash books, banking books and statements showing capital stock paid in, when paid in, by whom paid in, and whether said stock was issued for cash and/or in exchange for property.

No. 2. Also produce minute books of the corporation since its organization, up to this date.

No. 3. Please file, under oath, statement from your books showing when each share of stock was issued therein, and for what consideration, whether cash money, property or notes, attaching a copy of any and all notes and description of property received by the Company in payment of stock.

No. 4. Please attach statement of all bills receivable and bills payable, whether heretofore paid or now unpaid, which have been issued by or received by the Company since its organization.

No. 5. Please state whether the Oakhurst Company now claims to be the owner of that certain judgment granted in favor of the Missouri State Life Insurance Company as against W. P. Holland in the District Court of the United States for the Delta Division of the Northern District of Mississippi, at the January Term, 1923, thereof, and if you state that the Company does claim to be the owner, please attach an assignment thereof, or copy of the same, and state the consideration paid therefor by the Company.

Filed Jan. 8, 1929.

---

74 (Title Omitted.)

This cause coming on this day to be heard on motion of the Canal Bank & Trust Company that it be permitted to intervene in the above styled cause; and the Court having heard and considered the same, is of the opinion that the motion should be, and it is hereby, sustained.

This the 27 day of February, 1929.

E. R. HOLMES,
District Judge.

Filed March 4, 1929.

(Title Omitted.)

To the Honorable Allen Cox, Judge of the United States District Court, for the Division and District aforesaid:

Come intervener, Canal Bank & Trust Company, a banking corporation organized and existing under and by virtue of the laws of the State of Louisiana, with domicile and place of business in New Orleans, Louisiana, leave of this Honorable Court having first been obtained, and files herewith its petition of intervention in the above styled cause, and respectfully shows to the Honorable Court as follows:

I.

That at all times hereinafter mentioned your intervener was, and now is, a banking corporation and body politic, organized and existing under and by virtue of the laws of the State of Mississippi, with domicile in the City of New Orleans.

II.

76 This is an action in equity as against Florence T. Holland, a resident citizen of Clarksdale, Coahoma County, Mississippi; Planters National Bank, of Clarksdale, Mississippi, a banking corporation organized under and by virtue of the Acts of Congress of the United States of America of June 2., 1874, with domicile in Clarksdale, Coahoma County, Mississippi; the Peoples Bank of Jonestown, a banking institution organized and existing under the laws of Mississippi, domiciled at Jonestown, Second Court District of Coahoma County, Mississippi; the Planters Trust & Saving Bank a banking institution organized and existing under and by virtue of the laws of the State of Mississippi, domiciled at Clarks-

dale, Mississippi, Second Court District of Coahoma County, Mississippi; Bank of Lula, a banking institution organized and existing under and by virtue of the laws of the State of Mississippi domiciled at Lula, Second Court District of Coahoma County, Mississippi, Progressive State Bank, a banking institution organized and existing under and by virtue of the laws of the State of Mississippi, with domiciled at Tutilwer, Tallahatchie County, Mississippi; Bank of Hollandale, a banking institution organized and existing under and by virtue of the laws of the State of Mississippi, with domicile at Hollandale, Washington County, Mississippi; Paul Holland, Mary H. Hays, and Rubye Hays Thompson, all resident citizens of Hollandale, Washington County, Mississippi; Planters Manufacturing Company, a corporation organized under and by virtue of the laws of the State of Mississippi, domiciled in the Second Court District of Coahoma County, Mississippi; Bank of Ruleville, a banking institution organized and existing under the laws of the State of Mississippi, with domicile at Ruleville, Sunflower County, Mississippi; F. M. Owens, a resident citizen of the First Court District of Coahoma County, Mississippi; L. C. Townes, a resident citizen of Clarksdale, Second Court District of Coahoma County, Mississippi, all said parties defendant being resident citizens of the Northern District of the State of Mississippi for the holding of United States Courts; the Oakhurst Company, a corporation organized and existing under and by virtue of
77 the laws of the State of Mississippi, with domicile at Clarksdale, Coahoma County, Mississippi; the Government of the United States, intervener herein, a corporation sovereign and body politic, domiciled in the City of Washington, District of Columbia.

III.

Your intervener further alleges that this is an action in equity wherein the intervener is a resident citizen of the State of Louisiana, on the one part, and the defendants are resident citizens of the State of Mississippi, having their domiciles and residences within the Northern District of Mississippi for the holding of United States Court, and the intervener, the United States Government, having its domicile and residence in the City of Washington, District of Columbia, and the amount involved herein is in excess of Five Thousand Dollars ($5,000.00), exclusive of interest and costs; that this intervention is a suit of a civil nature filed for the purpose of enforcing and foreclosing a judgment lien owned by this intervener, the Canal Bank and Trust Company, as against the property involved in this action.

IV.

Intervener would respectfully show to the Court that on the third day of November, 1928, the intervener procured a judgment as against W. P. Holland, a copy of which is herewith filed, marked Exhibit "A" and prayed to be made a part hereof as if fully copied herein. The said judgment appears at page 235, Minute Book 7, of the Minutes of the Chancery Court for the Second Court District of Coahoma County, Mississippi.

V.

78 Intervener alleges that after the procurance of the said judgment the said intervener caused a certain execution to be issued on said judgment as against the said W. P. Holland, but that the Sheriff of Coahoma County, to whom the execu-

tion was given, has returned the same "nulla bona", not having found anything belonging to the said W. P. Holland upon which said execution could be levied, a copy of which said execution, with return thereon, is herewith filed as Exhibit "B" and prayed to be made a part hereof as if fully copied herein.

VI.

Intervener now shows to the Court that W. P. Holland is and has been for more than fifteen years, last past, the husband of the defendant, Florence T. Holland, and that the defendant is indebted to the intervener in the sum hereinbefore set forth, to-wit: the sum of Ninety-eight Thousand Six Hundred Eighty-one Dollars and Ninety-seven Cents ($98,581.97), with 6% interest thereon from and after the 15th day of December, 1927; that the said W. P. Holland is now insolvent.

VII.

Intervener alleges that the indebtedness herein sued for arose on or about the 16th day of December, 1920, and was for money loaned by the intervener to W. P. Holland, evidenced by a note of Five Hundred Thousand Dollars ($500,000.00), of date December 16, 1920. Intervener alleges that said loan of said money to the said W. P. Holland was based on a statement made by the said W. P. Holland to the intervener of his financial worth before and on said date and upon the reputation of the said W. P. Holland, said reputation being based on statements made by the said W. P. Holland as to his financial worth before and on said date, and the intervener relying upon the reputation of the said W. P. Holland that he was at that time time worth exceeding Three Million
79 Dollars ($3,000,000.00) advanced said money on the basis of credit as aforesaid in addition to the collateral attached to the said note.

VIII.

Intervener further shows that for more than twenty years prior to June 19th, 1922, the said W. P. Holland was connected with a banking institution formerly existing in this county known as the Planters Bank, Clarksdale, Mississippi, and that for more than twelve years prior to the year 1920, said W. P. Holland was the President of said Bank, and as such President, had sole charge of the affairs and operation thereof; intervener further shows that the said Holland in his managing and control of the affairs of said bank, and of his own affairs, was a highly successful business man.

Intervener further shows that during the year 1920, and for many years prior thereto, the said Holland owned or controlled a majority of the stock in the Planters Bank, which stock intervener alleges on information and belief, to have been highly valuable stock at said time, worth upon the open market in excess of Three Hundred Dollars ($300.00) per share, and the holdings of the said Holland being worth upon the market in excess of Fifty Thousand Dollars ($50,000.00).

Intervener further shows that in addition thereto the business activities of the said Holland in connection with the operation of said Planters Bank, he, the said Holland, for many years prior to the year 1920, was engaged in various and sundry investments, stock operations and other business enterprises not necessary here to detail, except that intervener shows that during said period to 1920, the said Holland was commonly known as a large operator upon the New York and Chicago Stock Exchange and the New Orleans and New York Cotton Exchanges and the Chicago Grain Exchange, being engaged in operations upon all of such exchanges of buying and selling stocks and bonds, cotton and grain and other commodities.

Intervener shows that during said period prior to the year 1920 said W. P. Holland was, as aforesaid, highly successful in his ventures and operations upon the several mentioned herein and by reason of his industry and foresight, acquired a vast amount of property which should be subjected to the debts of the said Holland by the decree of this Court; intervener shows that in addition to the activities of the said Holland upon the said exchanges, he was connected with various and sundry local banking and other institutions organized for profit, and in each and all such institutions with which he was connected, he exercised the control thereof; intervener further shows that up to said year 1920, the vast majority of the property of the said Holland was invested in the stocks and bonds and other negotiable securities easily transferrable by indorsement and delivery, and that he had not to any appreciable extent acquired holdings of lands in this and other counties of the Mississippi Delta; intervener alleges upon information and belief that at the beginning of said year 1920 the said Holland was an immensely rich man; because, as aforesaid, of his industry and ability, and that the total aggregate of his holdings and property amounted to more than Three Million Dollars ($3,000,000.00) in excess of his liabilities, which said property, as aforesaid, was invested in the stocks of sundry local corporations to some extent, and most largely invested in the stocks of great industrial corporations, whose stocks and bonds are commonly sold upon the said Exchanges; intervener is unable to state with any degree of accuracy definitely the amount and number of shares of stock owned by Holland in the several corporations in which, during the time prior to 1920, he had his said immense fortune invested.

81 IX.

Intervener further shows that during the period of time following the opening of the great war in Europe,

a period of war inflation opened in this country; that prices of all products and stocks were inflated, and that after the signing of the Armistice ending hostilities in said war in November, 1918, there swept over this country what is known as the War Boom; intervener further shows that the community surrounding the City of Clarksdale was in the midst of said War Boom and that prices of lands and the agricultural products produced in the Mississippi Delta advanced to almost unbelievable heights; that during all of said period, the said Planters Banks vastly extended its obligations in and around Clarksdale, Mississippi, and extended its loans to its borrowing customers to tremendous sums; that there was feverish activity in the purchase and resale of lands in the Mississippi Delta; that lands advanced from a value of approximately Fifty Dollars ($50.00) per acre to Two Hundred Dollars ($200.00) and Three Hundred ($300.00) Dollars per acre; intervener shows that it was necessary for the said Planters Bank and the said Holland in financing and furnishing the monies necessary to carry out the transactions of its customers in the purchase and sale of lands, to procure monies from foreign sources, including banks located in New York, Chicago, and other metropolitan cities of this country and intervener shows that said monies were procured by the pledge by said Planters Bank of its credit and bills receivable as collateral thereto, and that said indebtedness of said Planters Bank increased to its said several creditors so that during the first part of the year 1920, the said Planters Bank was indebted to its several creditors in an aggregate amount in excess of Fourteen Million ($14,000,000.00) Dollars; intervener would further show that this boom, referred to,

82 following the great war burst in the first part of the year 1920 and that the conditions became gradually more serious as said year progressed; that said Holland, as the President and

as a Director of the said Planters Bank, realized in the fore part of the year 1920, that the said Bank would not be able to withstand the shock of deflation and realized that he was personally liable to the several creditors of the Bank for the debts due them, because of the mismanagement of the affairs of said Bank, as well as his own creditors; said Holland further realized that unless he should take some false and fraudulent means and procure by some means the transfer of his vast holdings of property, the same would become subjected to sale for the payment of the debts and liabilities as aforesaid of said Holland, and especially intervener's debt; intervener also shows that at said time the said Holland realized that in addition to the sundry liabilities that he then owed to the several creditors of said Planters Bank, that he would be called upon by those Banks holding the debts and obligations of the Planters Bank to personally guarantee and underwrite the payment of such obligations and that also in order to keep the said Bank operating during the year 1920 it would be necessary that he pledge his personal credit in order to borrow monies from persons and corporations to be used by him in connection with the affairs of said Bank, and at said time intervener alleges that also said Holland realized that unless some steps were taken that his said vast fortune might be consumed in the repayment of such obligations then existing and which might necessarily arise out of the condition then facing the said Holland, but that judgments might and would be taken against him on his indebtedness.

X.

Intervener shows that with the circumstances as then existing, the said W. P. Holland and defendant, Florence T. Holland, then and thereupon
83 conceived a scheme and entered into a conspiracy whereby they would transfer and

place all of the property then owned by said W. P. Holland nominally in the name of the defendant, Florence T. Holland, and thereby place the same beyond the reach of your intervener and the other creditors of the said Holland.

Intervener shows that during the month of January, 1920, the said Holland was the owner of a great number of shares of stock in excess of Thirty Thousand in one of the great industrial corporations of this country known as the Texas Oil Company; that in pursuance of the scheme aforesaid and in order to place the property beyond the reach of the creditors of the said Holland, he, the said Holland, caused to be sold upon the said New York Stock Exchange a great number of his shares of stock in the said Texas Oil Company, and intervener shows that during the month of February, 1920, he, the said Holland, received from the proceeds of the sale of his stock in the said Texas Oil Company an aggregate amount of One Million One Hundred Thirty-three Thousand Four Hundred Ten and 34/100 Dollars ($1,133,410.34); that said stock as aforesaid was sold through the brokers of the said Holland upon the said New York Exchange and the proceeds of such sale were remitted to the said Holland in Clarksdale, in this County, and were deposited by said Holland in the said Planters Bank to the credit of said Holland; intervener shows, however, that this constituted relatively a small part of the vast estate of said Holland;

Intervener further shows that the manner and means of the transfer of the said part of said property of the said Holland from himself to the defendant, Florence T. Holland, consisted in this:

That the said Holland did cause the said Planters Bank to transfer and sell sundry of its bills receivable, being the notes and obligations of its customers,

84 payable to it, ostensibly to the defendant, Florence T. Holland, but that the purchase price of said notes would be paid by the said W. P. Holland, So, intervener shows that on May 19th, 1920, as an instance of the effectuation of said scheme and conspiracy, the said Holland caused the said Planters Bank, he being the President thereof, and in control of the affairs of the same, ostensibly to transfer and sell to the defendant, Florence T. Holland, sundry of the said bills receivable of the said Bank of the value of and purchase price of One Hundred Eighty-one Thousand Two Hundred Forty-nine and 36/100 ($181,249.36) Dollars; that likewise on May 20th of said year said Holland caused the said Bank likewise ostensibly to sell to the said Florence T. Holland sundry other bills receivable of the said Planters Bank of the value of and at the purchase price of Four Hundred Twenty-five Thousand Seven Hundred Ten and 30/100 Dollars ($425,710.30); intervener shows that the purchase price of said receivables was all paid out of the said account and deposit of the said W. P. Holland, and that the nominal transfer thereof to the name of the defendant, Florence T. Holland, was made with the intent, and has had the effect of, hindering, delaying and defrauding creditors in the collection of the just indebtedness due to them; intervener further shows that during the months of July, August, September, October, November December of 1920, and during the month of January 1921, the said Holland continued to cause the said Bank ostensibly to transfer sundry of its bills receivable to the said defendant, Florence T. Holland, for the purpose aforesaid, and under the conditions aforesaid, so that intervener shows that during said period of time the said Holland caused the said Bank ostensibly to sell to the said defendant, Florence T. Holland, an aggregate of its

bills receivable of One Million Fifty-seven Thousand Five Hundred Eighty-nine and 63/100 Dollars ($1-057,589.63); intervener shows that ostensibly the said Florence T. Holland proceeded to collect and/
85 or sell the said receivables and convert the proceeds of the collection and/or sale of the same to her individual use and benefit, but plaintiff shows in equity that the proceeds of said fraudulent transfers and the re-investment thereof and the increment therefrom are subject and liable to the debts and obligations in this Court of the said W. P. Holland.

Intervener further shows that although the said W. P. Holland owned comparatively a small amount of real property within the jurisdiction of the Court, that at said time, he the said Holland, did own several pieces of real property within said jurisdiction, of a highly valuable nature, and that the nominal transfers of said property to the said defendant, Florence T. Holland, was a part and parcel of the said scheme and conspiracy to divest the said Holland of all and every kind and character of property, subject to its debts and obligations, and thereby hinder, delay and defraud the creditors of the said Holland; intervener shows that in pursuance of said scheme and conspiracy, on May 1st, 1920, the said W. P. Holland, made, eexcuted and delivered to the defendant, Florence T. Holland, a deed of gift, which deed is recorded in Book 63, at page 142 of the land deed records of Coahoma County, Mississippi; inintervener shows that by said deed of conveyance for the consideration of natural love and affection, the said Holland conveyed to the defendant, Florence T. Holland, the following described property in Coahoma County, Mississippi, to-wit:

That certain tract of land lying along the right bank of the Sunflower River, described as follows:

Beginning at a store on the west boundary line of Section Fourteen, eight hundred sixty feet due north of the corner of Sections Fourteen, Fifteen, Twenty-two and Twenty-three; thence south sixty degrees forty-five minutes east, three hundred forty-six feet to a point, which is the point of be-
86 gining of the following described land; thence due north three hundred twenty-five feet to the center of Sunflower River; thence eastwardly following the thread of the center line of said river to the point of intersection of said center line with the north line of Second Street; of the City of Clarksdale; thence south seventy-five degrees thirty minutes west two hundred eighty feet to the southeast corner of the Fire Station lot on the north side of Second Street thence north fourteen degrees and thirty minutes west, thirty feet to the northeast corner of said lot; thence south seventy-five degrees and thirty minutes west and parallel to the north line of said Second Street sixty feet to the northwest corner of said Fire Station lot on the east line of Dorr Avenue; thence north thirty-one degrees and fifteen minutes west along the east line of Dorr Avenue, five hundred feet to a point; thence north forty-two degrees and forty-five minutes west, three hundred feet on the east line of Dorr Avenue; thence north thirty degrees and fifteen minutes west one hundred forty feet on the east line of Door Avenue; thence north one degree and forty-five minutes west two hundred feet to a point on the east line of Riverside Avenue; thence nine degrees and forty-five minutes east one hundred feet to a point on the east line of Riverside Avenue; thence north twenty-three degrees fifteen minutes east one hundred feet to a point on the east line of Riverside Avenue; thence north four degrees and forty-five minutes east five hundred eighty feet to a point on the east line of Riverside Avenue; thence north twenty degrees

and forty-five minutes west one hundred feet to a point in the east line of Riverside Avenue;
87 thence north fifty-five degrees and fifteen minutes west one hundred feet to a point on the north side of Riverside Avenue; thence north fifty-six degrees and fifteen minutes west one hundred sixty feet to a point on the north side of Riverside Avenue; thence north seventy-seven degrees and fifteen minutes west seven hundred feet to a point on the north side of Riverside Avenue; thence north seventy-nine degrees and fifteen minutes west one hundred feet to a point on the north side of Riverside Avenue; thence North seventy-seven degrees and fifteen minutes west one hundred feet to a point on the north side of Riverside Avenue; thence north seventy-eight degrees and forty five minutes west one hundred seventy feet to a point on the north side of Riverside Avenue; thence north seventy eight degrees and fifteen minutes west six hundred feet to a point; on the north side of Riverside Avenue; thence north eighty-one degrees and fifteen minutes west two hundred seventy feet to a point on the north side of Riverside Avenue; thence South three degrees and twenty-five minutes west one hundred twenty feet to a point on the west side of Riverside Avenue; thence south twenty-five degrees and forty-five minutes west three hundred feet to a point on the west side of Riverside avenue; thence south thirty-four degrees and forty-five minutes west three hundred feet to a point on the west side of Riverside Avenue; thence south thirty-six degrees and thirty minutes west two hundred forty feet to a stake on the east side of Oakhurst Avenue; which is also the point of beginning. This tract contains 41.51 acres, of which 11.71 acres is situated in Lot
88 Twelve of Section Fourteen, 23.36 acres situated in Lot Thirteen of Section Fourteen and 6.44 acres situated in Lot two of Section Twenty-three, all in Township Twenty-seven, Range Four, west.

All Lot Six, containing 38.41 acres and all that part of Lot nine, lying north of the center line of Mill Bayou; containing 29.21 acres, except five acres heretofore conveyed to Coahoma County on May 20th, 1909, by deed recorded in Book 24 at page 301 of the Record of Land Deeds in the office of the Chancery Clerk of said County at Clarksdale, Mississippi, and except three acres conveyed to M. K. Wildberger by deed dated November 21st, 1919, and not yet of record, which said three acres is described as follows: Beginning at an iron stake in the line dividing Sectional Lots Eight and Nine, about two hundred feet north of the center line of Mill Bayou; thence north along the dividing line between said lots eight and nine a distance to give a frontage of two acres to an iron stake; thence west a distance to give a depth of 1 1/2 acres to an iron stake; thence south parallel to said dividing line between said Lots Eight and Nine a distance to give a length of two acres, to an iron stake; thence east and perpendicular to the dividing line between said Lots Eight and Nine to the iron stake at the point of beginning. The total acreage herein conveyed being 67.62 acres and all being in Section Fourteen, Township Twenty-seven, Range Four West; also three acres in the southeast corner of Lot Nine north of Mill Bayou, in Section Fourteen, Township Twenty-seven, Range Four, West, more particularly described as
89 follows: Beginning at a stake in the line dividing Lots Eight and Nine about two hundred feet from the center of Mill Bayou and north of said Bayou; thence north along the dividing line between said Lots Eight and Nine a distance to give frontage of two acres to an iron stake; thence west a distance to give a depth of 1 1/2 acres to a stake; thence south parallel to the dividing line between Lots Eight and Nine aforesaid to a stake; a distance to give a depth of two acres; thence east and perpendi-

cular to the dividing line between Lots Eight and Nine to a point of beginning; also the following described property situate in the City of Clarksdale, County and State aforesaid, to-wit, Lot One and the eastern half of Lot Two; Lot Six and the eastern half of lot five, all in Block Sixteen in Oakhurst Subdivision, Lots Numbers Three and Four and the East Half of Lot Five and the west Half of Lot Two of Block Sixteen of Oakhurst Subdivision. Lots Fifteen, Sixteen, Seventeen and Eighteen in Block Fifteen in the Dolan and Peacock Oakhurst Addition. Lots One and Two in Block Nine in the Oakhurst Subdivision.

A copy of which said deed is filed with original bill marked Exhibit D to the original bill and filed therewith, and made a part hereof, as if fully copied herein. Reference to the same is here made. Intervener shows that said property is, as aforesaid, highly valuable property, located within the corporate limits of the City of Clarksdale, and was, and is, now of the value in excess of Forty Thousand ($40,000.00) Dollars;

90 Likewise, intervener shows that on September 27th, 1920, the said W. P. Holland, in pursuance of the said scheme and for the purpose aforesaid, purported to convey to the said Florence T. Holland by deed recorded in Book 63 at page 328 of said records, the following described land in Coahoma County, Mississippi, to-wit:

Undivided one-half interest in all of Section Seven and the West Half of Section Eight, Township Twenty-six, Range Four, West, and the East Half of the Southeast Quarter of Section One, and the East Half of the East Half of Section Twelve, Township Twenty-six, Range Five, West, commonly known and referred to as Harahan Plantation, all lying and being in the Second Judicial District of Coahoma

County, Mississippi, and comprising in all 1192.71 acres, less 5.02 acres heretofore conveyed as right-of-way of the Yazoo & Mississippi Vallay Railroad Company and less eight acres lying south of the county road, running east and west and in the southern extremity of the aforesaid property, which is the land claimed by J. W. Cutrer and herein conveyed comprising in all 1179.71 acres, more or less.

A copy of said deed is filed with the original bill hereof, marked Exhibit "E" to the original bill and filed therewith, and made a part hereof as if fully copied herein, reference to the same being here made intervener shows that the recited consideration for said conveyance was love and effection, and that the said interest in said property conveyed by said deed was extremely valuable, being of a value in excess of Forty Thousand Dollars ($40,000.00) which said interest intervener shows the said defendant, Florence T. Holland has converted and used for her own use and benefit.

Intervener also shows that likewise on
91 April 28th, 1924, in pursuance of said scheme and conspiracy, the said W. P. Holland, by deed recorded in Book 76, at page 441 of said records, sold and conveyed to the said defendant, Florence T. Holland, the following described real property in Coahoma County, Mississippi, to-wit:

Lots numbered One to Ten, inclusive in Block Eleven of the Dolan and Peacock Oakhurst Addition to the City of Clarksdale, Coahoma County, Mississippi.

A copy of which said deed is filled with the original bill and marked Exhibit "F" thereto, and made a part hereof as if fully copied herein, reference to the same being here made; intervener further shows that the consideration recited in said deed last aforesaid

is One Dollar ($1.00) paid, which intervener shows was a mere nominal consideration and not a valuable one, and that no consideration whatsoever was paid for said deed;

Intervener further shows that the real property sold and transferred by the said W. P. Holland to the said Florence T. Holland by the several conveyances heretofore mentioned and consisted of all the real property within the jurisdiction of this Court owned by said W. P. Holland, but intervener shows that in addition thereto, the said W. P. Holland owned sundry promissory notes executed by sundry persons, payable to said Holland and secured by liens upon real property in this County, and that the said Holland in order to completely effectuate his said scheme and purpose, transferred all of said notes to the said Florence T. Holland under circumstances similar to those heretofore recited;

Intervener shows that on October 15th, 1921, the said Holland being then the owner of ten notes of Two Thousand Five Hundred Dollars ($2,500.00) each, executed by W. K. Herrin and W. K. Herrin, Jr., payable to said Holland, and secured by deed of trust recorded in Book "55" at page 402 of said records entered upon the margin of said
92 record a notation reciting the transfer of said notes to the said defendant, Florence T. Holland, on February 2nd, 1921, which said notation is duly attested by Y. E. Howell, Clerk; intervener shows that said notation is duly attested by Y. E. Howell, Clerk, and recited the receipt of value for said assignment, but that as a matter of fact no value was paid, and that said last mentioned assignment aforesaid was merely colorable and for the purpose aforesaid.

Intervener also shows that on July 20th, 1921, the said W. P. Holland purported to convey to said Florence T. Holland by deed recorded in Book 13, at page 43, of the Land Deed records of this County, at Friars Point, Mississippi, to-wit:

One-fourth undivided interest in all that part Sections Five, Six, Seven and Eight, Township Twenty-six, Range Six, lying North of the Yazoo & Mississippi Delta Levee and between the levee and the river, also all that part of the North Half of Section Twelve and that part of the Southeast Quarter of Section Twelve, west of the Yazoo & Mississippi Levee, and all that part of the South half of Section Thirteen west of said levee and all that part of the Northeast Quarter of Section Thirteen between the levee and Lake Charles, and all of Southwest Quarter of the Northwest Quarter of Section Thirteen; all of the East Half of Section Fourteen and the Northeast Quarter of the Northwest Quarter of Section Fourteen; all of said lands in Sections Twelve, Thirteen and Fourteen being in Township Twenty-six, Range Seven, West, Coahoma County also that part of the West Half of Section Twenty-four and that part of the West Half of Section Twenty-five, and that part of Section Thirty-six, except the southwest quarter thereof lying west of the right-of-way of the
93 Mississippi Levee; also all of fractional section Thirty-five and the southeast diagonal half of Section Twenty six, Range Seven, West, Bolivar County, Mississippi, there being embraced in the entire tract 2220 acres more or less, being a part of what was formerly known as the Eldridge Plantation, conveyed by United States Lumber & Cotton Company to Oscar Johnson.

A copy of said deed is filed with the original bill and marked Exhibit "G" thereto, and made a part

hereof as if fully copied herein, reference to the same being here made; intervener shows that the consideration recited in said deed is the sum of Five Thousand ($5,000.00) Dollars, but intervener shows that no consideration was ever paid and that the same was totally and wholly voluntary and was made as aforesaid with the intent to effectuate the scheme and conspiracy herein outlined.

XI.

Intervener shows that in addition to the properties heretofore mentioned, transferred by said W. P. Holland, in pursuance of said scheme and conspiracy, the said W. P. Holland owned other vast holdings as aforesaid in corporations, evidenced by the shares of stock of said corporations, but intervener is not able to state with accuracy the kind and number of sale; intervener charges on information and belief, however, that the stocks so owned were of the value in excess of One Million ($1,000,000.00) Dollars and that the same were transferred by simple indorsement and delivery, without consideration, by the said W. P. Holland to the said Florence T. Holland, and thereafter such transfers were entered upon the books of such corporations; intervener further shows that it is advised and so believes that at said time, to-wit, during the year 1920, the said W. P. Holland had sundry accounts and deposits with banks and other
94 persons, forms and corporations, non-resident to this state, and that he, in pursuance of said scheme, proceeded to transfer and deliver or assign such accounts and debts of such firms, persons, and corporations nominally to the name of the defendant, Florence T. Holland. All of this was done, as intervener alleges in pursuance of the said scheme and conspiracy and with the effect of accomplishing

the purpose of hindering, delaying and defrauding creditors in the collection of their just debts and obligations.

Intervener shows that by means of the several transfers herein mentioned, that the said W. P. Holland transferred, without consideration, to the defendant, Florence T. Holland, his whole estate, including all of his property, both real, personal and mixed, and thereby, as aforesaid, nominally placed the same beyond the reach of creditors of said W. P. Holland.

XII.

Intervener shows that since the years 1920 and 1921, the defendant, Florence T. Holland, being nominally the owner of the property so transferred to her by said W. P. Holland, has nominally proceeded to transact business and invest and reinvest the proceeds of the property so transferred to her. As a matter of truth and in fact, plaintiff alleges that all of such transactions, as will be hereinafter mentioned, have been handled exclusively through the instrumentalities of the said W. P. Holland and that in law and in this Court of equity, such transactions have really been W. P. Holland, doing business and transacting business under the assumed name of Florence T. Holland; that in such manner, the said Florence T. Holland has operated upon the stock and grain exchanges heretofore mentioned, has acquired vast amounts of real property in this, and adjoining counties, has become the owner of the large amounts of stocks in the corporations made defendants
95 hereto; that the monies necessary to carry
o all of such business operations and transactions were all acquired through the transfers heretofore mentioned and that such transactions hereinafter mentioned have been done and had with the purpose and intent of further hindering, delaying

and defrauding creditors in the collection of their just debts and obligations, and that the properties hereinafter mentioned as nominally resting in the name of the defendant, Florence T. Holland, are simply the result of the re-investment of the property of W. P. Holland and are subject to the debts and obligations of the said W. P. Holland. Intervener shows that the proceeds of the said fraudulent transfers hereinbefore mentioned have been intermingled and commingled with such property as might have been owned by the defendant, Florence T. Holland, prior to said transfers, in such a manner that it is impossible to segregate one from the other, and intervener shows that it is entitled to subject not only the properties transferred by such conveyances hereinbefore mentioned to the payment of its debts, but in addition thereto, all of the increment and interest and enhancement in value thereof.

Intervener shows that with the proceeds of said transfers nominally the defendant Florence T. Holland, has heretofore purchased, and is now nominally the owner of stock in the defendants, Planters National Bank, of Clarksdale, Planters Trust & Savings Bank, Progressive State Bank, Bank of Hollandale, and Planters Manufacturing Company; intervener is unable to state to this Court the exact number of shares or the value thereof, nominally owned by said Florence T. Holland in said corporations, or either of them, but intervener alleges on information and belief that the nominal holdings of the said Florence T. Holland in said corporations exceed in value the sum of Two Hundred Fifty Thousand Dollars ($250-000.00).

96 XIII.

Intervener shows that in addition to the investment of a great majority of the proceeds of the trans-

fers made by said Holland to defendant, Florence T. Holland, in negotiable and transferrable property, a small portion or part thereof has been invested and reinvested in real property located in this, and adjoining counties, of the Mississippi Delta; intervener shows that he is not advised of each and every part and parcel of said real property because he shows that the title to some parts is vested in the names of persons and corporations other than the defendant, Florence T. Holland, which vestment of title was, and is, made by said Holland and said Florence T. Holland with the purpose or intent of further hindering, delaying and defrauding intervener and other creditors. Intervener shows, however, that the title to all of the real property hereinbefore described is now outstanding in the name of the defendant, Florence T. Holland, with the exception of that property described in the deed made Exhibit "G" to the bill of complaint, which intervener shows has been nominally sold and conveyed to the defendant, F. M. Owens, and the purchase price secured by vendor's lien and the lien of a deed of trust purporting to be in favor of the defendant, Florence T. Holland, evidenced by two negotiable promissory notes of said Owens, payable to said Florence T. Holland of the aggregate principal amount of Fifty Thousand Dollars ($50,000.00).

Intervener shows that in addition to the property hereinbefore described, the following described property is nominally owned by the defendant, Florence T. Holland, in this County, to-wit:

Beginning at southwest corner of North Half of Northwest Quarter of Section Twenty-eight, Township Twenty-eight, Range Three, West, running thence north along western boundary of said Section Twenty-
eight, and the western boundary line of said
97 Section Twenty-one, to a point where boundary line of said Section Twenty one inter-

sects the south boundary line of a public road, leading from Clover Hill to Jonestown, thence in a northeasterly direction along southerly boundary line of said public road to a point where the said southerly boundary line of the said public road intersects the westerly boundary line of a ditch or canal known as the Swan Lake Lateral Ditch or Canal of Black Lake Drainage District, thence in a southerly direction following the westerly boundary line of said lateral ditch or canal to a point where said line intersects the south boundary line of said section twenty-two, thence in a westerly direction following the southern boundary line of Section Twenty-two, and south boundary line of section twenty-one, to the northeast corner of North Half of Northwest Quarter of Section Twenty-eight, thence in a southerly direction along in eastern boundary line of the North Half of Northwest Quarter of Section Twenty-eight, to the southwest corner of said North half of Northwest Quarter of Section Twenty-eight; thence west along south boundary line of the North Half of Northwest Quarter of Section Twenty-eight to point of beginning, the tract herein conveyed, North Half of Northwest Quarter of Section Twenty-eight, and all that part of section Twenty-two lying west Lateral Ditch or Canal south of public road, and all that part of section twenty-one lying south of public road, containing in the aggregate 290 acres, more or less. West Half of West Half of Section Twenty-seven and Northeast Quarter and South Half of Northwest Quarter and North Half of Southwest Quarter and Southeast Quarter of Southwest Quarter and West Half of
98 Southeast Quarter and Southeast Quarter of Southeast Quarter of Section Twenty-eight, and northeast Quarter of Northwest Quarter and North Half of Southeast Quarter of Northwest Quarter and North Half of Northeast Quarter and North Half of the south line of Northeast Quarter of Section

Thirty Three and Northwest Quarter of Northwest Quarter and North Half of Southwest Quarter of Northwest Quarter of Section Thirty-four, Township Twenty-eight, Range Three, West, containing 880 acres.

Intervener further shows that the said W. P. Holland is the President of and in control of the defendant, Planters Trust & Savings Bank, and that he has caused the title to the following described property in this County, to-wit:

All of Sections Twenty-one and Twenty-two; South half of Southeast Quarter and Southeast Quarter of Southwest Quarter of Section Twenty; North Half of Southwest Quarter and Southwest quarter of Southwest Quarter of Section Seventeen and West Half of Northwest Quarter of Section Twenty-seven, all in Township Twenty-seven, North, Range Four, West, and East Half of Section Twenty-four, Township Twenty-seven, Range Five, West,

to be vested in the said defendant, Planters Trust & Savings Bank, trustee. Intervener shows that as a matter of truth and in fact, the defendant, Florence T. Holland, claims to own an interest, the exact extent of which is unknown to your plaintiff in said property but which intervener alleges on information and belief to be a one-third undivided interest therein and that said interest in said property is one of the results of the re-investment of the property transferred by said W. P. Holland to the said Florence T. Holland;

Intervener further shows that nominally the title to the following described property is now
99 vested in the defendant, Florence T. Holland:

West Half of West Half of Southeast Quarter of Section Three, and Northwest Quarter of Northeast Quarter and East Half of Northeast Quarter of Northwest Quarter of Section Ten, all in township Twenty-six, North, Range Three, West, Coahoma County, Mississippi,

and that said property is also a part of the result of said scheme and conspiracy.

XIV.

Intervener alleges as aforesaid the large part of the property which is the result of the scheme and conspiracy herein outlined to the Court is now invested in property easily and quickly transferrable to bona fide purchasers for value, and is subject to be placed beyond the reach of intervener; that intervener is advised and so charges the facts to be that it is entitled to have the appointment of, and it is the duty of this Court, to order the appointment of a receiver of all of the property, both real and personal and mixed, of the defendant, Florence T. Holland, which said receiver shall be directed to take into his possession and to deal with in accordance with the orders of this Court, all of said property, and that the said Florence T. Holland should be directed by the decree and order of this Court to turn over and deliver to said receiver all of said property;

Intervener further shows that it is without remedy at law, and that it is entitled to have the issuance of a writ of temporary injuction, enjoining the said defendant, Florence T. Holland, from making any transfer whatsoever of any part or parcel of her property,
pending the outcome and settlement of this
100 litigation; that the said other defendants named herein should be, by said writ of in-

junction, enjoined from consenting or allowing the transfer of any stock or stocks in the said defendants, or either of them, now nominally outstanding in the name of the defendant, Florence T. Holland.

XV.

Intervener now shows that each and all of said transfers herein mentioned were and are fraudulent and void, and made as aforesaid with intent to hinder, delay and defraud your intervener and other creditors, and have had the effect thereof, and should be, by order of this Court, declared to be null and void, and for naught held, and that a decree of this Court be entered, granting and impressing in favor of your intervener a lien upon all of the property of the defendant, Florence T. Holland, whether herein specifically described or not, for the satisfaction of the indebtedness due intervener by said defendant, and that a Commissioner of this Court be appointed, with direction to sell said property in the manner provided in said decree for the satisfaction of the indebtedness so due to your plaintiff.

XVI.

Intervener would show to the Court that all of the fraudulent transfers heretofore alleged as having been made by the said W. P. Holland to his said wife, Florence T. Holland, and others, were made either after or in anticipation of his liability for indebtedness to intervener and other creditors; that the said W. P. Holland had made representations to creditors, upon which the creditors each and all relied; and that he, the said W. P. Holland, was worth personally in good and solvent securities and property an amount exceeding $3,000,000.00, over and above any and all indebtednesses which he, the said Holland, owed or

101 was liable for to any person; that the creditors of said Holland, relying upon these assurances and believing that the said Holland was solvent, accepted said assurances and extended credit to the said Planters Bank, and to the said W. P. Holland, who was at that time President of the Planters Bank, and extended and renewed indebtednesses for the said Holland and the said Planters Bank on the assurances and representations of the said Holland, when in truth and in fact the said Holland was then about to, or had already transferred, or since transferred every cent in money, stocks, bonds, securities and property to his wife, the said Florence T. Holland, with the intent upon their part, of him, the said W. P. Holland, and her, the said Florence T. Holland, to defeat and defraud the creditors of their just demands and indebtednesses; so that, whereas before and during the years 1919, 1920, and 1921, the said W. P. Holland was worth exceeding $3,000.000.00, and was the President of the Planters Bank of Clarksdale, Mississippi, and the said Florence T. Holland was possessed of very little money and personal property and real estate, it now appears that the said Florence T. Holland is exceedingly rich and worth more than $2,000,000.00; that she is now the President of the Planters National Bank, Clarksdale, Mississippi, and owns all the property, money, and assets formerly belonging to said W. P. Holland, while the said W. P. Holland transacts all of the business of her, the said Florence T. Holland, and is in active charge and the Vice-President of the said Planters National Bank, operating the same for the said Florence T. Holland, and the said W. P. Holland is daily, with acumen, shrewdness and business ability, adding to and building up the fortune, which in truth and in fact belongs to him, but is nominally in the name of his said wife, Florence T. Holland, held, as intervener alleges, by her in trust for the creditors of W.

P. Holland as aforesaid, and in this connection intervener alleges that if for any reason it is impossible to identify and show beyond doubt that such of
102 the property now in the hands of the said Florence T. Holland is the exact property in kind and nature as heretofore transferred to her by him, the said W. P. Holland, nevertheless, intervener alleges that in equity this Court ought and will impress a lien upon the property of every kind and description in the hands of the said Florence T. Holland, which may be the usufruct, interest, principal, and/or result of any and all property of every kind and character, which may have heretofore, or hereafter may be, transferred by the said W. P. Holland to his said wife, Florence T. Holland, fraudulently as aforesaid.

XVII.

The intervener alleges that the said W. P. Holland has likewise fraudulently transferred at various times property, money, and/or valuable things to his sister, Mrs. Mary H. Hays, and to his niece, Ruby Hays, now Ruby Hays Thompson, having conducted business in the names of both of these ladies for his own benefit and in order to defeat and defraud creditors of the said W. P. Holland of their just debts.

Intervener is not familiar with each and every transaction as above set out, as to the exact detail thereof, but here and now alleges and asserts that the said W. P. Holland carried on a large part of his business with Gray & Wilmerding, of New York, the said firm being brokers in New York City, in the name of the said Mary H. Hays, sister, and the said Ruby Hays, now Ruby Hays Thompson, niece aforesaid. Intervener would respectfully show that the said Mary H. Hays and said Ruby Hays, now Ruby Hays Thompson, should be made parties hereto for the express

purpose of giving an accounting as to what may or may not remain in their hands of the funds of the said W. P. Holland, as to how said transactions were carried on, and what, if any, disposition they made of the said funds and the business carried on in their names and with their consent for the special benefit of the said W. P. Holland, and in order to
103 screen from him the just demands of his creditors and defraud them and defeat their just claims.

Intervener alleges that as another step in the fraudulent transfer and conveyance of the property of the said W. P. Holland the said W. P. Holland, through his said wife, Florence T. Holland, has transferred and conveyed certain property, rights or choses in action to L. C. Townes, a brother of the said Florence T. Holland, in this:

That the Missouri State Life Insurance Company, a corporation of the State of Missouri, filed suit as against the said W. P. Holland for a large amount of money and joined the said Florence T. Holland in said suit, alleging therein as is alleged herein, that the said W. P. Holland, had fraudulently and unlawfully transferred and conveyed to the said Florence T. Holland large amounts of property and money in order to defeat the creditors of the said W. P. Holland, the said cause being No. 4043 on the docket of the Chancery Court of the Second Court District of Coahoma County, Mississippi;

Intervener would respectfully show to the Court that during the trial of the said cause and in order to further muddy the waters and transfer and dispose of the property of the said W. P. Holland, and in order to allow the said Florence T. Holland and the said L. C. Townes, her brother, to fraudulently claim a

large indebtedness as against the said W. P. Holland, and thereby defeat the creditors of the said W. P. Holland, the said Florence T. Holland, and the said W. P. Holland, defendants in said Cause No. 4043 on the docket of said Chancery Court, apprehending that a judgment would be gotten by the Missouri State Life Insurance Company, and that the facts alleged in said bill as to the fraudulent conveyance from W. P. Holland to Florence T. Holland would be demonstrated and performed, the said Florence T. Holland, W. P. Holland, and L. C. Townes entered into a fraudulent agreement whereby it was agreed that the said Florence T. Holland should pay in money, or other valuable things, to the Missouri State Life Insurance Company, an amount equal to
104 approximately $75,000.00, and that in turn the said Missouri State Life Insurance Company should transfer to L. C. Townes, a brother of Florence T. Holland, all rights, title and interest in and to the claim or choses in action of the Missouri State Life Insurance Company against the said Florence T. Holland and W. P. Holland, and thereby creating a claim on the part of the said L. C. Townes as against W. P. Holland and Florence T. Holland to the extent of approximately $300,000.00, with interest, which claim intervener alleges is wholly and entirely fictitious and fraudulent, and said agreement further provided that the said L. C. Townes, brother of the said Florence T. Holland, should carry on and dispose of the suit of the Missouri State Life Insurance Company against W. P. Holland and Florence T. Holland No. 4043 on the Chancery Court docket aforesaid.

Intervener alleges that the result of the said fraudulent conspiracy and combination between the said Florence T. Holland, W. P. Holland and L. C. Townes, was this: that the said L. C. Townes, without having

paid out any money or other valuable thing in any way, became seized and possessed of a fictitious and fraudulent claim against the said Florence T. Holland and W. P. Holland being the claim of the Missouri State Life Insurance Company for approximately $300,000.00 and interest, and that in truth and in fact the said Florence T. Holland purchased the said claim with her own money or other valuable thing, and agreed that the said L. C. Townes should be the ostensible owner thereof, so that in case creditors of the said W. P. Holland should sue him and the said Florence T. Holland, that the said L. C. Townes could appear to be the owner of a large claim of more than $300,000.00 which would be prior in point of time to the claim of any other creditor suing thereafter.

Intervener alleges that the suit of the Missouri State Life Insurance Company was founded on a judgment procured as against the said W. P. Holland by the Missouri State Life Insurance Company on the 27th day of January, 1923, for the sum of $240,-
105 524.02, with interest thereon at the rate of 6% per annum, said cause being No. 111 at law, in the United States Court for the Delta Division of the Northern District of Mississippi, and that the effect of said agreement is that the said L. C. Townes appears to be the owner of said judgment, as well as the right of action in Cause No. 4043, but intervener alleges that in truth and in fact he is not the owner thereof, but that the result of the said fraudulent transactions was that W. P. Holland, with his own money, in the name of his wife, purchased the judgment against himself for himself, and for his own use.

Wherefore, the intervener alleges that the said judgment now enrolled on the judgment roll of the Missouri State Life Insurance Company against W. P. Holland,

procured originally in the United States Court for the Delta Division of the Northern District of Mississippi, ought and should be canceled by order of this Court, and that the said L. C. Townes, and/or his grantee the Oakhurst Company, should be declared not to be the owner thereof or to have any interest therein, and the said Florence T. Holland should be declared by decree of this Court not to be the owner thereof, or to have any interest therein, and, further that the judgment itself was canceled and wiped out by the fraudulent sale and transfer thereof as set forth above.

Wherefore, intervener prays that the said L. C. Townes be also summoned herein as a party hereto to answer under oath these allegations.

Intervener further shows to the Court that in various ways, in addition to the allegations hereinbefore set forth, the said Florence T. Holland, through the agency of her husband and others, has transferred and attempted to hide from the creditors of the said W. P. Holland and her creditors a large part of the estate of the said W. P. Holland re-transferred to her as aforesaid; that with reference to the above transfer alleged to have been made to Lacy C.
106 Townes a further fraudulent transfer of the said estate of W. P. Holland to further defeat and defraud the creditors and cloud the record as follows:

That the said Lacey Townes, after hearing of the filing of the Original Bill by S. B. Cramer, plaintiff, in this cause and becoming afraid of his position therein, demanded that he be relieved from his false position, and thereupon in order to relieve the said Lacey Townes and to further transfer the said judgment and property, the following acts and things were done, as this plaintiff is informed and believes, to-wit:

The first fraudulent compromise with the Missouri State Life Insurance Company in Cause No. 4043, as your plaintiff is informed and believes, occurred in this manner:

One Jake Fink had purchased from the said Missouri State Life Insurance Company a plantation in Coahoma County, Mississippi, on which he owed the Missouri State Life Insurance Company a large amount of money, to-wit: approximately $175,000.00. The said Jake Fink was not coercible and practically insolvent, and the property, which was the only security the Missouri State Life Insurance Company held for the payment of its $175,000.00, was not worth exceeding $100,000.00. Therefore, the plan was conceived and carried out that instead of Mrs. Holland paying the Missouri State Life Insurance Company in the compromise of its suit against her approximately $75,000.00, in cash, that the payment should be made in this way:

Lacey Townes should purchase from the Missouri State Life Insurance Company the said Jake Fink Plantation at and for the price of approximately $175,000.00, though the said property as alleged was not worth exceeding $100,000; that the said Lacey Townes should pay $55,000 in cash in said purchase and give his notes amounting to $119,222.00 for the balance of purchase price of said plantation, and that the said deferred payments of $119,222 should
107 be evidenced by four (4) notes, to-wit, one note for $7,948.13 due December 1st, 1928, one note for $3,974.07 due December 1st, 1929, one note for $3,974.07 due December 1st, 1929, and one note for $103,325.73 payable in annual installments of $7,948.13 due annually on December 1st, 1930, and thereafter until the same should be fully paid.

Intervener is informed and believes that Mrs. Florence T. Holland furnished, through the Planters National Bank of Clarksdale, Mississippi, of which she is the President, or through the Planters Trust & Savings Bank, a savings bank adjunct of the said Planters National Bank, the sum of $55,000 in cash for the use of the said Lacey Townes in purchasing the said Jake Fink Plantation, and in addition thereto the said Florence T. Holland indorsed of the above notes that note for $7,948.13 due December 1st, 1928, and those two other notes for $3,974.07 each due December 1st, 1929, set forth above. In that way the said Florence T. Holland paid to the Missouri State Life Insurance Company, through the instrumentality of the said Lacey Townes, approximately $70,862.26.

Plaintiff alleged in the original bill, and intervener now here alleges, that the said compromise of said suit and the purchase of the said property by the said Lacey Townes was a fraud in law, and in fact for the purpose aforesaid, and plaintiff is informed and believes that said fraud was carried out by the Missouri State Life Insurance Company deeding to Lacey Townes the said Jake Fink Plantation by deed recorded in Book 15, page 64, of the record of land deeds for the First Court District of Coahoma County, Mississippi, for the consideration of $55,000.00 and $119,222 deferred payments as above stated, reference to which is here made, and a copy thereof will be produced at the hearing hereof. Thereupon Lacey Townes executed to the Missouri State Life Insurance Company a deed of trust on said property which is recorded at Book 28, Page 555 of said records of land deeds, which said deed of trust secured the balance of the said $119,222 deferred purchase price thereof.

108

Intervener is informed and believes that as a further part of the scheme to carry out the said fraudulent transfer of said judgment and property as aforesaid, an assignment was made by the Missouri State Life Insurance Company of date the 20th day of September, 1927, conveying and assigning the said Lacey Townes that certain judgment owned by the Missouri State Life Insurance Company as against the said W. P. Holland for approximately $240,000.00 and interest thereon for several years, and thereafter further carrying out said fraudulent scheme and transfer of said judgment and property, plaintiff is informed and believes that the said Lacey Townes requested the said Florence T. Holland and W. P. Holland that he be relieved from further liability and responsibility therein, whereupon intervener is informed and believes the said Florence T. Holland and W. P. Holland caused the said Lacey Townes to execute a deed to the Oakhurst Company, a corporation organized for the use and benefit of the said Florence T. Holland and W. P. Holland, transferring the said property known as the Jake Fink Plantation to the said Oakhurst Company for the consideration of $100.00; the said Oakhurst Company assuming the indebtedness owed by the said Lacey Townes to the Missouri State Life Insurance Company, and releasing the said Lacey Townes from further liability thereon, and intervener is informed and believes that the said Lacey Townes also transferred and assigned to the Oakhurst Company, or to some other person or company unknown to intervener, the said judgment of $240,000 with interest aforesaid, amounting to $300,000 owned by the Missouri State Life Insurance Company and held by it originally against the said W. P. Holland, Intervener alleges in regard to the Oakhurst Company that the same was organized on February 20, 1928, with an authorized capital stock of $300,000; that the incorporators were N. B. Sessions, confidential friend

of said W. P. Holland, Florence T. Holland,
109 and cashier of the Planters National Bank,
of which Mrs. Florence T. Holland is President; and intervener is informed and believes that the said N. B. Sessions put no money of any kind, character or description in said corporation; that the other incorporators of said Oakhurst Company were Lacey Townes, a brother-in-law of the said W. P. Holland and brother of said Florence T. Holland, and intervener is informed and believes that the said Lacey Townes put no money of any kind, character or description in the said corporation, and the last incorporator of said corporation was W. D. Garner, the brother-in-law of the said Florence T. Holland and said W. P. Holland, and intervener is informed and believes that the said W. D. Garner neither subscribed for stock nor put any money of any kind, character or description in said corporation but if any money was ever put in said corporation by either one of the three incorporators aforesaid, it was the money of the said Florence T. Holland placed in their hands by the said Florence T. Holland for the purpose of organizing the Oakhurst Company, a corporation, an instrument which the said Florence T. Holland and W. P. Holland might from time to time transfer, fraudulently, such of their property that they could in order to further defeat and defraud the creditors of the said Florence T. Holland and the said W. P. Holland.

As another instance of fraudulent transfers and to further show the utility of the Oakhurst Company to the defendant, Florence T. Holland for the purpose of fraudulent transfers, intervener now shows that the said Florence T. Holland has conveyed certain notes and indebtednesses belonging to her to the Oakhurst Company, being the Company above mentioned, and especially that property described as follows, to-wit:

North Half of Southwest Quarter and Southwest Quarter Southwest Quarter of Section 17, South Half of Southeast Quarter and Southeast Quarter of Southwest Quarter of Section 20;

All of Section 21;

110 All of Section 22;

West Half of Northwest Quarter of Section 27;

Northwest Quarter of Northeast Quarter and Northeast Quarter of Northwest Quarter of Section 28;

All in Township 27, Range 4 West.

East Half of Section 24 in Township 27, Range 5 West in County of Coahoma; and also

All of Section 19, 20, and 21; Lots 1, 2, 3 and 4 of Section 28, and Lot 1 in section 29, all in Township 26, Range One West, Quitman County, Mississippi.

Intervener alleges that the method and manner of the transfer of her interest in this property to the Oakhurst Company was procured by foreclosures of certain deeds of trust which the said Florence T. Holland either actually and legally owned, and having the property thereunder, transferred and sold by such foreclosures to the Oakhurst Company, thereby hiding the interest of the said Florence T. Holland in said property. The method and manner of the foreclosures are peculiarly known to the said Florence T. Holland and/or her agent W. P. Holland, acting for her in said scheme and devices, and therefore the intervener is unable to set out herein in detail the exact nature of such transfers; but intervener is informed and believes that the effect of the organization of said corporation and the subsequent transfers to it of the property now owned by it was to defeat and defraud creditors and an attempt to hide from creditors the property and money and the judgment aforesaid held by Florence T. Holland under fraudulent transfers to her from her husband, W. P. Holland.

Intervener is further informed and believes that certain notes aggregating $25,000.00 secured by deed of trust recorded in book 55, page 402, being the notes of W. K. Herrin et al payable to or made
111 for the benefit of W. P. Holland et al., were fraudulently transferred on October 15, 1921, by marginal note on the record of said deed of trust at said page. Said transfer being prima facia fraud because not reciting any consideration and being a transfer from W. P. Holland to his wife, Florence T. Holland, made on October 15, 1921, but alleged to be carrying out a transfer sale of said notes theretofore made on February 2, 1921. Intervener on information and belief charges the fact to be that the said notes so transferred and assigned by the said W. P. Holland to the said Florence T. Holland was a fraudulent transfer both in law and in fact. In order to avoid the payment of the intervener in his just claim and to defeat creditors generally, the intervener is further informed and believes that a further step made in the fraudulent conspiracy to hide said transfer of said note was taken as shown by the records of land sales, mortgages and transfers in Coahoma County, Mississippi, by having the property which was conveyed by said deed of trust and having part of the purchase price of which the said $25,000.00 in notes were given foreclosed by fraudulent foreclosure and sold to the said Oakhurst Company by deed of date, March 13, 1928, recorded at page 8 of book 97 of the record of land mortgages for the second Court District of Coahoma County, Mississippi, and by various other fraudulent sales, transfers and foreclosures which will be shown by the proof on the trial of this cause. In this manner, intervener is informed and believes that more than $50,000.00 worth of property has been fraudulently transferred to the said Oakhurst Land Company, not including the transfer to it of the property known as the Jake Fink property hereinbefore referred to.

Intervener is further informed and believes that in the further effort to defeat and defraud creditors and especially the plaintiff the said Mrs. Florence T. Holland has through her agent W. P. Holland, caused to be made upon her books of account which have
112 been kept by and under the direction of her husband, W. P. Holland, certain false, fraudulent alterations and entries.

And the said books mutilated so as show falsely the results thereof amounting in aggregate to more than $750,000.00, which said charges, mutilations and alterations are apparently of recent nature and all done as the intervener is informed and believes for the purpose and with the intent then and there to hinder, delay, and defraud the creditors of the said W. P. Holland and of the said Florence T. Holland who is possessed as aforesaid of all the property originally belonging to the said W. P. Holland.

The intervener further alleges upon information and belief that the said Florence T. Holland, through her husband, W. P. Holland, is now engaged in large gambling speculations on the various exchanges and boards of trade throughout the United States, using in such hazardous undertakings the very money and property as collateral security for such operations here involved in this suit. Intervener alleges that such gambling speculations are extremely hazardous and that there is great danger that the property involved here in this suit may be lost or again transferred and assigned so that the intervener, even though he should recover a judgment herein, will be without remedy.

XVIII.

The premises considered intervener prays for the issuance of summons to all of the defendants herein-

before mentioned, viz: Florence T. Holland, Planters National Bank of Clarksdale, Peoples Bank of Jonestown, Planters Trust & Savings Bank of Clarksdale, Miss., Bank of Lula, Lula, Miss., Progressive State Bank, Tutwiler, Miss., Bank of Hollandale, Hollandale, Miss., Paul Holland, Mary H. Hays, Ruby Hays Thompson, Planters Manufacturing Company, Clarksdale, Miss., Bank of Ruleville, Ruleville, Miss., F. M. Owens, and L. C. Townes, and the Oakhurst
113 Company, Clarksdale, Miss., commanding them to appear at the time fixed by law before this Honorable Court, then and there to plead, answer or demur hereto, but not under oath, the oath or oaths to any answer or answers herein filed are hereby expressly waived.

XIX.

Intervener prays that in addition to the personal judgments herein prayed for that all of the property herein mentioned and referred to, whether fully described herein or not as having been transferred, assigned, sold and/or delivered by the said W. P. Holland to any other person may be held by this Court to have been so transferred, fraudulently, and such transfers to be void in toto, and that a lien be impressed on all of said property wherever the same may be found for the payment of the judgments against the said W. P. Holland; that wherever the said property cannot be located that the same is shown to have gone into the personal estate of any of the defendants that the personal judgments be given by this Court against such defendants for the full amount of money, property or other things so fraudulently received by them.

XX.

Intervener further prays that a preliminary injunction may issue from this Honorable Court restraining

the defendants and all of them, their agents, attorneys, employees, etc., from in any way selling, assigning, transferring and/or disposing in any way of any of the money, property, stocks, bonds and/or other things alleged to have been transferred to him or them by the said W. P. Holland either directly or indirectly, until further order of this Court.

The intervener herein reiterates and alleges all the facts alleged in the original bill filed herein by S. B. Cramer and of the amount of the bill allowed to be filed herein, and prays specifically for all
114 the relief prayed for therein and herein.

XXI.

And intervener prays for other, further and general relief in this cause as to equity may seem meet, and as the case may require, and as in duty bound intervener will every pray, etc.

....., Attorneys for Intervener.

State of Mississippi,
Coahoma County.

This day personally appeared before me, the undersigned duly qualified and acting Notary Public in and for the County and State aforesaid, ..., who having been by me first duly sworn states on oath that he is solicitor, agent and attorney-in-fact for the within named intervener in the foregoing bill of complaint, and that within the knowledge of affiant and affiant's principal, all the matters and facts set forth in the foregoing intervention are true and therein stated, and those set forth on information and belief affiant and his principal believe to be true.

.....

Sworn to and subscribed before me, this ... day of ....., 1929.

.....

Notary Public.

My commission expires .....

115 EXHIBIT "A".

M. B. 7/235.

Canal Bank & Trust Company, et al.,
vs.
Earl Brewer, et al.

This cause coming on this day to be heard in term time, upon the application and petition of the Canal Bank & Trust Company of New Orleans, Louisiana, that a judgment be entered herein as against W. P. Holland in the sum of $98,681.97 principal and interest as of December 15th, 1927, with interest thereon at the rate of 6% per annum from and after December 15th, 1927, & upon answer & proof taken, and it appearing to the Court that this cause has been finally settled as between all the parties save and excepting as between the Canal Bank and W. P. Holland, and that the question of the indebtedness and the entering of judgment as against the said W. P. Holland was especially reserved in the final decree in this cause to be entered after imputing and applying the credits due the said W. P. Holland, if any, by the said Bank;

And it appearing to the Court that the said W. P. Holland and the said Canal Bank & Trust Company have taken and stated an account as between them and the said W. P. Holland has admitted the said

above described indebtedness of $98,681.97 principal and interest as of December 15th, 1927, and has agreed that the said Canal Bank & Trust Company may proceed to judgment as against him for said amount and the written agreement signed by the said W. P. Holland, as follows:

"Clarksdale, Miss., December 15, 1927.
Canal Bank & Trust Company,
New Orleans, La.,

Gentlemen:

I do hereby agree that the disposition and administration by the Canal Bank & Trust Company and the Hibernia Bank & Trust Company of the
116 collateral attached of the collateral attached to my indebtedness evidenced by note of $500,-000.00 of date December 16th, 1920, and renewals thereof, and all applications of payments arising from the collection thereof, have been correctly and properly and efficiently administered by the said banks and/or either of them, and I further agree that there now remains due and owing to the Canal Bank & Trust Company and to the Hibernia Bank & Trust Company, both of New Orleans, La., on that certain indebtedness evidenced as aforesaid by my note of $500,-00.00 dated December 16th, 1920, and renewals thereof the sum of $98,681.97, being principal and interest to December 15th, 1927, which amount is hereby made and declared to be the stated amount due by me to them, and for which amount they may proceed to judgment as against me.

I hereby relinquish, release and discharge the said Bank from any claims for damages or liabilities of off-sets of any kind or character against said indebtedness.

Very truly yours,
W. P. HOLLAND."

O. K. GF.

The Court being fully advised in the premises, doth hereby adjudge and decree that the said W. P. Holland is indebted to the Canal Bank & Trust Company in the sum of $98,681.97, as of December 15th, 1927 & that the said Canal Bank & Trust Co. do have & recover from & of the said Holland said $98,681.97 with legal interest, and the said Holland is taxed with all costs herein of this decree not already paid, and from this date forward, for which let execution issue.

It is further ordered, adjudged and decreed that the Canal Bank & Trust Company is to retain and may enforce as collateral for such balance so found to be due all of the collateral of every kind and character attached to the said W. P. Holland note of $500,000.00 and renewals, with the special provisions, however, that the indorsement thereon of Earl Brewer and Ed Brewer is discharged, as provided in the Agreement of Counsel herein of December 15th, 1927.

117 Ordered, adjudged and decreed this 3rd day of November, 1928.

SAM I. OSBORNE,
Special Chancellor.

State of Mississippi,

Case No. 3851.

To the Sheriff of Coahoma County, in said State:

You are hereby commanded that of the real and personal estate of W. P. Holland you cause to be made the sum of Ninety-eight thousand, six hundred eighty-one & 97/100 Dollars adjudged and decreed to Canal Bank & Trust Company by the Chancery Court of 2nd Dist. Coahoma County, in the State aforesaid, at the October Term A. D. 1928 thereof, on the 3rd day of November, A. D. 1928 also interest at 6 per centum

on said sum from December 15th, 1927 until you shall make said money, and costs to amount of Five and 20/100 Dollars as taxed, and costs to accrue under this execution to be taxed by you, an abstract of said decree having been duly filed and enrolled in the office of the Clerk of the Circuit Court of the County of Coahoma in said State, on the ... day of ..... A. D. 19..., and proper request having been made for the issuance of this writ. You are further commanded to have said moneys before said Chancery Court on the 2nd Monday of April, A. D. 1929; and have there then this writ.

Given under my hand and official seal, and issued this the 5th day of February, A. D. 1929.

Y. E. HOWELL,
(Seal) Clerk of said Chancery Court.

Fees of Y. E. Howell, Clerk.

(a)	Filing and marking 3 paper	.15
(e)	Setting down for hearing 1 time	.10
(f)	Enrolling or recording 1 decree at 10c per 100 words	.75
(g)	Approving and taking 1 bond ..	.50
118 (i)	Entering 1 Sheriff's return	.10
(u)	Issuing 1 writ	1.00
Issuing 1 Subpoena for one witness		.50
1 certificate		.50
Total Clerk's Fees		$3.60

Fees of W. L. Matthews, Sheriff.

(f)	Entering & Return 1 writ	.50
(i)	Summoning 1 witness	.50
Total Sheriff's Fees		1.00

Fees of R. A. Myers, Circuit Clerk.

(c)	Filing and marking 1 papers	.10
(x)	Enrolling decree for first defendant ...	1.10
	Total Fees of Circuit Clerk	$1.10

Recapitulation.

Fees of Y. E. Howell, Clerk	3.60
Fees of W. L. Matthews, Sheriff	1.00
Fees of R. A. Myers	1.10
Grand Total	$5.70

Return.

After diligent search and inquiry I have been unable to find or locate any goods, effect, property or other thing upon which to levy the within writ.

This 4th day of March, 1929.

W. L. MATTHEWS, Sheriff,
By M. H. SCOTT, Deputy Sheriff.

Sheriff fees 50c.

State of Mississippi,
County of Coahoma.

I, Y. E. Howell, Clerk of the Chancery Court, in and for said County and State, hereby certify that this and the reverse side of this sheet contains a whole, true and correct copy of Execution on Enrolled Decree, in cause No. 3851, together with the return of the Sheriff, as the same appears on file in my office, at Clarksdale, Miss.

119 Witness my hand and official seal, this the 6th day of March, A. D. 1929.

Y. E. HOWELL,
(Seal) Clerk of the Chancery Court of Coahoma County, Miss.,
BEN JACOBSON, D. C.

Intervention Canal Bank & Trust Co. Filed August 21, 1929. Maynard, Fitzgerald & Venable, Lawyers, Clarksdale, Mississippi.

---

120 ORDER.

(Title Omitted.)

This day there came on to be heard the application of the Canal Bank and Trust Company, et al., for leave to intervene as plaintiffs in the above-entitled cause, and the Court having considered said petition it is ordered that the same be and it is hereby allowed and the said Canal Bank and Trust Company, et al., are hereby admitted as plaintiffs in said cause.

Ordered this the 17th day of April, 1930.

E. R. HOLMES,
U. S. District Judge.

Filed April 17, 1930.

---

121 INTERVENING PETITION.

(Title Omitted.)

Now comes the Canal Bank & Trust Company of New Orleans, Louisiana; Hibernia Bank & Trust

Company of New Orleans, Louisiana; Philadelphia National Bank of Philadelphia, Pennsylvania; Continental Illinois Bank & Trust Company of Chicago, Illinois; First National Bank of Boston of Boston, Massachusetts; Citizens & Southern National Bank of Atlanta, Georgia; Mississippi Valley Merchants State Trust Company of Saint Louis, Missouri; Irving Trust Company of New York, New York; National Bank of Kentucky of Louisville, Kentucky, Bank of America of New York, Bank of Commerce & Trust Company of Memphis, Tennessee; Chemical National Bank of New York, New York; and Hanover National Bank of New York, New York, herein called petitioners, joined herein by S. B. Cramer, original plaintiff in said cause, and file this, their intervention petition, leave having first been had and obtained of and from the Court so to do, and state the facts following, to-wit:

I.

Petitioners, on April 16th, 1930, recovered, in this Court, their several judgments against W. P. Holland in the amounts following, to-wit:

Canal Bank & Trust Company	773,340.41
Hiberna Bank & Trust Company	856,992.28
Philadelphia National Bank	597,751.19
Continuental Illinois Bank & Trust Company	917,735.45
122 First National Bank of Boston	584,774.93
Citizens & Southern National Bank	146,276.48
Mississippi Valley Merchants State Trust Co.	486,933.52
Irving Trust Company	1,242,147.15
National Bank of Kentucky	231,231.36
Bank of America	322,612.19
Bank of Commerce & Trust Company	212,684.65
Chemical National Bank	803,052.43
Hanover National Bank	305,047.74

II.

Petitioners state that the claims upon which the said judgments are founded arose in favor of each of said petitioners, respectively, on the dates following, to-wit:

Canal Bank & Trust Company, 4/1/20.
Hibernia Bank & Trust Company, 3/1/20.
Philadelphia National Bank, 3/22/17.
Continental Illinois Bank & Trust Company, 10/15/20.
First National Bank of Boston, 2/10/21.
Citizens & Southern National Bank, 2/10/21.
Mississippi Valley Merchants State Trust Co., 5/1/20.
Irving Trust Company, 2/10/21.
National Bank of Kentucky, 11/5/20.
Bank of America, 2/10/21.
Bank of Commerce & Trust Company, 10/1/19.
Chemical National Bank, 2/10/21.
Hanover National Bank, 9/20/2[illegible]

III.

Petitioners further state that abstracts of the several judgments aforesaid have been duly filed in the office of the Clerk of Circuit Court of Coahoma County at Clarksdale, Mississippi, and enrolled on the judgment roll as required by the laws of the United States and the laws of the State of Mississippi, and that, therefore, the said judgments constitute and are liens
123 upon the several properties described in the original bill of complaint on file herein and the several amendments thereto.

IV.

Petitioners state that executions have been issued upon said judgments and returned Nulla Bona.

V.

Said S. B. Cramer states that the original Bill of Complaint on file herein is a general creditors bill, and that he hereby expressly consents to the intervention of the said petitioners, and consents that they may intervene as aforesaid, and be accorded all the rights and privileges of plaintiffs in said cause.

VI.

Petitioners state that they are respectively citizens and residents of the several states wherein the several cities are located which are stated herein, and that diversity of citizenship exists between all of the petitioners on the one part and all of the defendants in the said above entitled cause on the other part, in that all of the defendants are residents and citizens of the State of Mississippi, and that there is involved in this controversy a sum or value in excess of Five Thousand ($5,000.00) dollars, exclusive of interest and costs.

Wherefore, petitioners as aforesaid, joined as aforesaid pray all relief for themselves sought in the Original Bill of Complaint and all amendments thereto on file herein.

GREEN, GREEN & POTTER,
MAYNARD, FITZGERALD & VENABLE,
ROBERSON & COOK,
SAM C. COOK,
Solicitors for above named parties.

124 State of Mississippi,
County of Coahoma,
City of Clarksdale.

Personally appeared before me, the undersigned Notary Public in and for the above City, County, and

State, Sam C. Cook, one of the solicitors for the parties named in the foregoing pleading, who on oath states that all facts stated in said petition are true of his own knowledge; that he makes this oath for and on behalf of said parties for the reason that all of said parties are non-residents of the State of Mississippi, and are not available for the purpose of making the same.

SAM C. COOK.

Sworn to and subscribed before me this 16th day of April, 1930.

LOUIS ARRINGTON,
(Seal) Notary Public.

Filed April 17, 1930.

---

125 (Title Omitted.)

To the Honorable E. R. Holmes, Judge, etc.:

And now come the plaintiffs and show to the Court that in the evidence taken on the final trial in the above styled cause it appears that the defendant, Florence T. Holland, and her agent W. P. Holland, have during the pendency of this litigation and utterly disregarded the rights and privileges of the plaintiffs and the equities in this cause, and the dignity, power, and authority of this Honorable Court, and in contumacious and contemptious disregard thereof, have in order to further hinder and delay the creditors of the said W. P. Holland, done the following acts:

1. That the said defendant and her agent, W. P. Holland, conspiring together have during the pendency of this litigation and within the past few days fraudulently transferred to W. D. Garner, the brother-in-

law of the defendant, one thousand shares of stock of the Planters Bank of Clarksdale, Mississippi, described in the original bill filed herein, and on which by virtue of the law and the statute of the State of Mississippi, the plaintiffs claimed and had a lien from the date of the filing of this suit. The manner of such transfer, as shown by the evidence, was that the said W. P. Holland, agent of the defendant, and the fraudulent grantor of the original property described in the bill herein, still remaining in possession of the property which it is alleged he fraudulently transferred before the filing of the original bill, made a simu-
126 lated sale of said one thousand shares of stock to the said W. D. Garner, and took therefor the note or notes of the said W. D. Garner at a price Fifty Dollars ($50.00) per share less than the book value thereof, and at the same time took from the said W. D. Garner a written agreement that the defendant might buy back from said Garner "at the same price" (not even including interest and presumably for the surrender of the notes aforesaid) the said stock. The said W. P. Holland, agent as aforesaid, then attached the stock to the said notes and delivered the same to the Bank of Grenada, a corporation organized and doing business under the laws of the State of Mississippi domiciled at Grenada, Mississippi, and/or to J. T. Thomas, personally or as the president of said corporation, and alleges that he received therefor One Hundred Thousand Dollars ($100,000.00) in cash (the book value of such stock and plaintiffs believe the actual value being more than a Hundred Sixty Thousand Dollars ($160,000.00). In this connection plaintiffs allege that the said Bank of Grenada through its officers, and the said J. T. Thomas, personally had full and complete actual as well as constructive notice of the pendency of this litigation, and of all of the facts and circumstances surrounding the same.

2. Plaintiffs allege that the said defendant and her agent, W. P. Holland, took the said One Hundred Thousand dollars, as shown by the evidence already introduced before this Honorable Court, and in further disregard of the dignity, power and authority of this Court attempted to dissipate the same so as to further hinder and delay the plaintiffs and the equities of this Court by paying Forty Thousand Dollars thereof, it is alleged to J. T. Thomas, personally, or as president of the Bank of Grenada, for an old alleged indebtedness alleged to be due to the said Thomas by W. P. Holland, personally. The other Sixty Thousand dollars thereof to pay an indebtedness due the Grenada Bank, as it is alleged, for an indebtedness of the said Florence T. Holland, contracted, the plaintiffs now allege, with full knowledge on
127 the part of all parties of the pendency of this litigation and the equity of the plaintiffs, and contracted since the filing of the bill herein.

3. Plaintiffs allege that the defendant, Florence T. Holland and her said agent, W. P. Holland, so conspiring as aforesaid, have within the past few days under the circumstances aforesaid, in contemptuous and contumacious disregard of the power and authority of this Honorable Court transferred by simulated gift to Mrs. Anna T. Garner, the wife of the W. D. Garner mentioned above, more than Ninety Thousand Dollars ($90,000.00) of cash and negotiable security, mentioned and described in the original bill herein and on which the plaintiffs claim lien; that said transfer was wholly simulated and in fraud as aforesaid.

4. Plaintiffs allege that Florence T. Holland, the defendant and her said agent, W. P. Holland, conspiring together for the purposes aforesaid, and with the contemptious disregard etc., aforesaid, together

with Messrs. Butler, Lamb, Foster & Pope, their attorneys, and especially William E. Lamb both said attorneys lastly said having been admitted by this Court as officers of this Court the practice before this Honorable Court disregarding the rights of the plaintiffs herein and the power and authority of this Court have transferred, setover and assigned to the said William E. Lamb of the firm of attorneys aforesaid, apart of the trust fund herein sued for, to-wit: approximately Ninety Thousand dollars ($90,000.00) of said trust fund. Plaintiffs allege that the said attorneys and all the parties concerned in said transfer actually and constructively knew that the said property and money so transferred was a part of the trust fund herein sued for held by the defendant under the power and direction of this Court to be disposed of only with the equities of all parties in view and by order and consent of this Honorable Court.

128 5. Plaintiffs allege that in the scramble to contemptiously and contumaciously get rid of all the property herein sued for, and upon which the plaintiffs claim lien, all of which was and is in the constructive possession and under the power and authority of this Court, the defendant and her agent, and attorneys have transferred in manner not now known to the plaintiffs various other monies and property by covenous practices and fraudulent schemes so that now it appears from the statement of the defendant and her agent upon the witness stand that the bulk of the estate herein sued for has been dissipated during the pendency of this litigation and while under the authority of this Court in utter and complete contemptuous and contumacious disregard of this Court of equity and its power, right and authority.

The premises considered the plaintiffs pray this Court that citation be issued to the various parties mentioned above concerned in the transactions afore-

said, citing them to appear before this Honorable Court upon a day to be named by the Court, there to show cause why they shall not be held in contempt of this Court.

Therefore, and for the further purpose if the same shall appear necessary of canceling and setting aside the various alleged covenous, fraudulent and nefarious transfers aforesaid, that this Honorable Court, for the purpose of carrying out and effectuating such decrees this Honorable Court may render in the main cause herein, that each all and every of above mentioned parties, and other parties who may appear to be concerned in the said transfers, be made parties to cause, by proper process returnable as required by law, and that upon final hearing hereof your Honor grant to the plaintiffs full and complete general relief herein as to equity may seem meet, but that in the meantime your Honor may issue herein said temporary restraining order as may appear necessary to prevent the further transfer by gift, or otherwise, of the corpus of the estate herein sued for, and that such temporary restraining order be supplemented by writs of injunction to be granted hereinafter, permanently and wholly restraining and enjoining all persons from further transferring and disposing of the property sued for, and/or involved in this litigation.

Respectfully submitted,

GREEN, GREEN & POTTER,
ROBINSON & COOK,
MAYNARD, FITZGERALD
& VENABLE.

129

State of Mississippi,
Coahoma County.

This day personally appeared before me, the undersigned, a duly qualified and acting Notary Public in and for the County and State aforesaid, Gerald Fitz-

Gerald, agent and attorney for all the plaintiffs, in the above styled cause, who having been by me first duly sworn, first states on oath that the matters and facts alleged in the foregoing petition are true as therein stated.

GERALD FITZGERALD.

Sworn to and subscribed before me this the 21st day of April, 1930.

E. J. MULLEN,
Notary Public.

(Seal)

Filed Apr. 21, 1930.

---

130 ORDER.

(Title Omitted.)

This day this cause came on to be heard upon the application of the plaintiff for the issuance of a temporary injunction as prayed for in the original Bill of Complaint and the Court having heard the evidence doth hereby order and adjudged that a temporary writ of injunction issue enjoining and restraining the defendant Florence T. Holland, either personally, through her agent or attorneys, from directly or indirectly distributing disposing or mortgaging or otherwise alienating or encumbering any property, real, personal or mixed, of which she is now possessed or of which she has any right title or interest whatsoever, until the further orders of this Court the making of any bond on behalf of the plaintiff up on the issuance of said injunction is hereby waived by the defendant, and the issuance of the said injunction agreed to by all parties.

Ordered and adjudged this the 22nd day of April, 1930.

E. R. HOLMES, Judge.

131 (Title Omitted.)

This day this cause came on to be heard on the sworn petition of the plaintiffs, the same being now on file, it being therein alleged that there were certain alleged transfers to W. D. Garner, Grenada Bank, J. T. Thomas, Anna T. Garner, Carl D. Loos, and William E. Lamb, severally and respectively as therein appears, and it being alleged that said transfers of said property to said parties were made by the defendant herein after this Court obtained jurisdiction over said property therein described with intent to hinder, delay and defraud the plaintiffs of their rights therein, and to deprive this Court of its jurisdiction thereover;

And it being alleged to this Court that there was heretofore herein filed a suit by Sterling B. Cramer, to set aside certain fraudulent conveyances as therefrom more fully appears on the records of this Court, and that intervention was therein allowed to other plaintiffs;

And it further being alleged that jurisdiction of this Court attached to said property described in said pleadings and now alleged to have been transferred, and this Court being vested with full jurisdiction thereover to administer the same;

And it further being alleged that as to said W. D. Garner, J. T. Thomas, and the Grenada Bank, the property so transferred, or alleged to be, consisted of One Thousand shares of the capital stock of the Planters National Bank, and One Hundred Thousand ($100,000.00) in cash.

132 And it being further alleged that the transfer to Anna T. Garner consisted of the transfer of Ninety Thousand Dollars ($90,000.00) approximately in cash and negotiable security;

And it further being alleged that the transfer to the said William E. Lamb, and Carl D. Loos consisted of the sum of approximately Ninety Thousand Dollars, ($90,000.00) in cash;

And it further being alleged that the transfer to Milton R. Jones and the Planters Manufacturing Company consisted of the sum of approximately Thirty two thousand dollars ($32,000.00).

And it further being alleged that all of said property was in the constructive possession of this Court in a suit lawfully pending and proceedings therein being regularly had, and that said transfers, if made, were of property in the possession and under the control of this Court, and that it is essential that in order to preserve its jurisdiction and authority that this order should be made now therefore;

It is hereby ordered, adjudged and decreed that a copy of this decree be forthwith served upon each of the above named parties, severally, and that they and each of them, severally and respectively, be commanded to be and appear before this Court, the Honorable Edwin R. Holmes, presiding as District Judge, at the Courtroom in the Courthouse, at Clarksdale, Mississippi at 9 A. M. April 22nd, 1930, then and there, severally and respectively, to show cause, if any they have or can, why they and each of them should not be adjudged to be in contempt of this Court under the allegations as to them made that they and each of them accepted transfers of property in the possession of this Court with the intent to hinder, delay and defraud this Court in the exercise of its jurisdiction with reference to said property and every part thereof.

133 And it is further ordered, adjudged and decreed that said parties and each of them fur-

ther appear at the time and place mentioned, and severally and respectively show cause, if any they have or can, why they should not be adjudged to hold all of said property described subject to the jurisdiction of this Honorable Court, to be dealt with by this Honorable Court as fully and completely as if said transfers had never been made, and said property and every part thereof had remained in the possession and under the control of this Honorable Court;

It is further ordered that said parties and each of them show cause, if any they have or can, why they and each of them should not be severally adjudged in contempt of this Court and therefor punished in manner and form as equity and good conscience, and the dignity and authority of this Court may demand.

It is further ordered that a copy hereof be delivered to the Marshal of this Court to be by him personally served upon each of the above named defendants, and that pursuant thereto that said named parties be made parties to this cause and do herein appear and show cause why that by plaintiffs asked should not be done, and why that the essential to maintain the dignity and authority of this Court be not performed.

Ordered, adjudged and decreed this April 21st, 1930.

E. R. HOLMES, District Judge.

Attest: Clerk. To the Marshal to execute and return immediately.

R. G. LOWERY, Clerk,
CELIA COOK DAVIS, D. C.

134 Filed April 22, 1930.

MARSHAL'S RETURNS.

Received this writ April 21, 1930, at Clarksdale. I have executed the within writ personally, by delivering a true copy of same to each of the person named, as follows:

W. D. Garner, at Minter City, not found, on April 21st, 1930. Anna T. Garner, at Minter City, not found, on April 21st, 1930. J. T. Thomas, not found at Grenada, served on B. C. Adams instead of J. T. Thomas at Grenada, April 21st, 1930. Carl D. Loos, and William E. Lamb, at Clarksdale, on April 21st, 1930.

This April 21st, 1930.

CHARLES R. LIGON,
U. S. Marshal,
By C E. RIVERS, Deputy.

---

135 DECREE.

(Title Omitted.)

This cause coming on this day to be heard at this term upon all the pleadings, evidence and proceedings herein, and all of the parties hereto being duly and legally before the Court in person, or by attorneys, the said cause having been argued and submitted to the Court; and the Court having duly considered the same, does hereby adjudge and decree as follows:

1.

W. P. Holland, named in the pleadings in this cause is justly and lawfully indebted to the plaintiff and interveners, by reason of the judgments rendered by this Court, on the dates hereinafter mentioned, in the amounts as follows, to-wit:

Chemical National Bank of New York City $19,653.63, inclusive of interest to this date;
Canal Bank & Trust Company . . . . . $ 773,340.41

Hibernia Bank & Trust Company.....	856,992.28
Philadelphia National Bank	597,751.19
Continental Illinois Bank & Trust Co...	917,735.46
Citizens & Southern National Bank....	146,276.48
Mississippi Valley Merchants State Tr. Co.	486,933.52
Irving Trust Company	1,242,147.15
Bank of America	322,612.19
Chemical National Bank	803,052.43
Hanover National Bank	305,047.74
Bank of Commerce & Trust Company	212,684.65
National Bank of Kentucky...	231,231.36
First National Bank of Boston..... ..	584,774.83

The last mentioned judgments, except that in favor of the said Chemical National Bank, now aggregating $19,653.63 as aforesaid, were rendered by this Court on April the 16th, 1930.

And the said W. P. Holland is also lawfully and justly indebted to the said Canal Bank & Trust Company by reason and because of a certain judgment or personal decree rendered by the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, on the.....day of.....19...., in cause number 3851, styled in said Court, Canal Bank & Trust Company vs. Earl Brewer et al, which judgment inclusive of interest to date aggregates $112,-497.42, the total aggregate amount of said judgments, exclusive of interest on those judgments rendered as aforesaid on April the 16th, 1930, and exclusive of interest on the other judgments herein mentioned aggregate and total to this date the sum of $7,612,730.84, and the said indebtedness so evidenced by said judgments and so hereby decreed is hereby declared to be fixed as a lien from the date of the filing of the original bill in those causes, upon the entire estate of the defendant Florence T. Holland, consisting of

property, real, personal and mixed, and of every kind wheresoever situated and especially upon that property as hereinafter described, and the said estate of Florence T. Holland is hereby declared to be and to have been from May the first, 1920, a trust fund held in trust by the said Florence T. Holland for the benefit of the plaintiff and interveners in this cause hereby decreed to be and to have been creditors of the said W. P. Holland.

2.

That William A. Schmitt be appointed receiver of this Court of the entire estate of Florence T. Holland, and she, the said Florence T. Holland, and all other persons whomsoever, are hereby directed and commanded to deliver to him, as such receiver, forthwith all the property of every kind and character by her, them, or any of them, held, which said property, when so delivered to said receiver shall be subject to the further orders of this Court.

137

Said receiver shall first give a bond in the sum of twenty-five thousand dollars in some surety company qualified to do business in Mississippi, said bond to be conditioned according to law.

There is hereby adjudged to exist against the entire estate of the said Florence T. Holland a lien on behalf of the plaintiffs above named, and each and every one of them, as of the date of the filing of the original bill in this cause, in the proportion which the amount of the judgments each herein individually described bears to the entire amount of the said judgments, being fixed on the basis of said proportion. When, if, and after the said receiver shall have paid said amounts so severally due the said plaintiffs under this lien so thus impressed, with interest thereon, he

shall then deliver the remaining and undisposed of property, and/or cash, to the said Florence T. Holland or to whomsoever is thereto lawfully entitled.

Said receiver is vested with the power to sell and dispose of said property for cash or credit, subject to the approval from time to time of this Court, said disposition to be upon such terms and conditions as may be from time to time by this Court approved. The Court hereby reserves to itself full jurisdiction of this cause to make such other and further orders as it may deem proper, and as equity may require, both as to increasing the amount of the estate and/or increasing the amount due and owing to any party plaintiff, and/or uncovering additional prop-
138 trty and disposing of any adverse claims that may be interposed as against any portion of said estate.

Said Florence T. Holland is hereby commanded to deliver to the said receiver the following specific articles of property, the same belonging to said Florence T. Holland, located in the State of Mississippi, to-wit:

Stocks.

	Certificate No.	No. Shares
Bank of Lambert Stock:	19	50
	20	4

Name of Corporation.	Certificate No.	No. Shares of Stock.
Bank of Lula Stock:	129	40
	135	2
	136	5
Bank of Hollandale Stock:	341	2

Name of Corporation.	Certificate No.	No. Shares of Stock.
Also 56½ shares of stock in Bank of Hollandale, certificate numbers unknown, sold to Paul Holland on or about October 31, 1929.		
Bolivar County Bank:	352	10½
Peoples Bank of Jonestown:	21	31-1/3
	22	2
Planters National Bank:	10	5
	11	5
	13	5
	113	25
	116	10
	119	10
	123	13
139	126	15
	127	400
	133	5
	135	163
	141	5
	131	500
Also 1000 shares stock in Planters Bank pledged with Grenada Bank, Grenada, Mississippi, on notes of W. D. Garner; and		
500 shares of Planters Bank stock pledged with Grenada Bank on note of Florence T. Holland.		
Oakhurst Company:	8	1
	19	698
Also 51 shares stock Oakhurst Company, certificate numbers not known.		

Name of Corporation.	Certificate No.	No. Shares of Stock.
Stonewall Life Insurance Co:	225	50
	473	5
Masonic Temple Assn. of Clarksdale:	150	2
Ruleville Hotel Co:	30	5
Moon Lake Fishing Club:	3	1
Moon Lake Club:	17	1
Coahoma County Club:	50	1
Planters Mfg. Co.:	371	2
	398	127
140	401	20
	412	16
	421	307
	434	30
	517	60
Also 614 shares of Planters Manufacturing Co. stock issued in the name of W. D. Garner; Also 326 shares of Planters Manufacturing Co. stock issued in the name of Paul Holland.		
Mississippi Cottonseed Products Co. (Preferred):	P 059	22
	P 074	11
Mississippi Cottonseed Products Co. (Common):	C 0112	21
	C 0141	36
Herrin Crutcher Co.:	20	1
Southern Central Life Ins. Co.:	111	5
Citizens Bank & Trust Co., Belzoni:		2

Notes.

Name.	Amount.
Planters Mfg. Co.	$ 52,500.00
E. L. McMurchy	10,000.00
L. C. Franklin	750.00
F. M. Owens	40,000.00
141 W. P. Holland	39,754.22
W. P. Holland	500,408.00
W. K. Herrin, Jr.	22,500.00
Gidden & Townsend	46,000.00
J. E. Townsend	10,000.00
Paul Holland	16,300.00

Cash in Banks.

Planters National Bank	3,064.94
Bank of Hollandale	1,712.20
Bank of Lula	150.00
Progressive State Bank	206.07
Bank of Ruleville	20.00
Peoples Bank of Jonestown	150.00
Grenada Bank	350.00
Planters Trust & Savings Bank	110.00
Currency in safe at residence	1,660.00

Also note of Minnie Brewer (with collateral of Bobo bonds attached thereto) in amount of $21,900.00.

Accounts Receivable.

Name.	Amount.
H. J. Lawler	$ 757.59
Phil Miller, Lambert Place	2,851.57
R. L. Payne	645.82
Joe Dabs	6.50

Other Property.

Boats in Moon Lake.
Chrysler Automobile.
Ford auto truck.
Packard Car.
Live stock, horses, and cattle at residence.
Remington Guns.
Johnston Motor at Moon Lake.
Household furniture, rugs, etc., at residence and residence curtilage, contents, appertenances therein and thereunto belonging in Clarksdale, Miss.,
142 and that these properties so thus delivered be made a portion of the receivership property; that said Florence T. Holland be, and she is hereby, enjoined and restrained, either personally, through her agents or attorneys, from directly or indirectly distributing, disposing, or mortgaging, or otherwise alienating or incumbering any property of which she is seized, possessed, and/or has under her control in whatsoever character.

XVI.

This Court reserves full jurisdiction of the cause to make any other and further orders which may be found from time to time essential for the creation, preservation, and/or disposition of the relative rights of the several parties hereto, or any claimants of any portion of the estate, now or hereafter created.

XVII.

The real property hereunder dealt with is described as follows:

Eldorado Place, described as follows, said place being in Madison County, Mississippi: A one-third un-

divided interest in the West Half of the Southeast Quarter of Section 3, and the East Half of the Southwest Quarter, less 20 acres off the West side thereof, and the East Half of the Northeast Quarter and the Northwest Quarter, less 30 acres off the East side thereof, and the Southeast Quarter less 5 acres out of the Northeast corner thereof, less 2 acres out of the South-
east Corner thereof; Section 10, all in Town-
143 ship 11, Range 3 East.

The following described property in Coahoma County, Mississippi:

That certain tract of land lying along the right bank of the Sunflower River, described as follows: Beginning at a stake on the west boundary line of Section Fourteen, eight hundred sixty feet due north of the corner of Sections Fourteen, Fifteen, Twenty-two and Twenty-three, thence south sixty degrees forty-five minutes east, three hundred forty-six feet to a point, which is the point of beginning of the following described land; thence due north three hundred twenty-five feet to the center of Sunflower River; thence eastwardly following the thread of the center line of said river to the point of intersection of said center line with the north line of Second Street, of the City of Clarksdale; thence south seventy-five degrees thirty minutes west two hundred eighty feet to the southeast corner of the Fire station lot on the north side of Second Street; thence north fourteen degrees and thirty minutes west; thirty feet to the northeast corner of said lot; thence south seventy-five degrees and thirty minutes west and parallel to the north line of said Second Street sixty feet to the northwest corner of said Fire Station lot on the East line of Dorr Avenue; thence north thirty-one degrees and fifteen minutes west along the east line of Dorr Avenue, five hundred feet to a point; thence north forty-two de-

gress and forty-five minutes west, three hundred feet on the east line of Dorr Avenue; thence north thirty degrees and fifteen minutes west one hundred
144 forty feet on the east line of Dorr Avenue; thence north one degree and forty-five minutes west two hundred feet to a point on the east line of Riverside Avenue; thence nine degrees and forty-five minutes east one hundred feet to a point on the east line of Riverside Avenue; thence north twenty-three degrees fifteen minutes east one hundred feet to a point on the east line of Riverside Avenue; thence north four degrees and forty-five minutes east five hundred eighty feet to a point on the east line of Riverside Avenue; thence north twenty degrees and forty-five minutes west one hundred feet to a point in the east line of Riverside Avenue; thence north fifty-five degrees and fifteen minutes west one hundred feet to a point on the north side of Riverside Avenue; thence north fifty-six degrees and fifteen minutes west one hundred sixty feet to a point on the north side of Riverside Avenue; thence north seventy-seven degrees and fifteen minutes west seven hundred feet to a point on the north side of Riverside Avenue; thence north seventy-nine degrees and fifteen minutes west one hundred feet to a point on the north side of Riverside Avenue; thence north seventy-eight degrees and forty-five minutes west one hundred seventy feet to a point on the north side of Riverside Avenue; thence north seventy-eight degrees and fifteen minutes west six hundred feet to a point; on the north side of Riverside Avenue; thence north eighty-one degrees and fifteen minutes west two hundred seventy
145 feet to a point on the north side of Riverside Avenue; thence South three degrees and twenty-five minutes west one hundred twenty feet to a point on the west side of Riverside Avenue; thence south twenty-five degrees and forty-five minutes west, three hundred feet to a point on the west side of

Riverside Avenue; thence south thirty-four degrees and forty-five minutes west three hundred feet to a point on the west side of Riverside Avenue; thence south thirty-six degrees and thirty minutes west two hundred forty feet to a stake on the east side of Oakhurst Avenue; which is also the point of beginning. This tract contains 41.51 acres, of which 11.71 acres is situated in Lot Twelve of Section Fourteen, 23.36 acres situated in Lot Thirteen of Section Fourteen, and 6.44 acres situated in Lot Two of Section Twenty-three, all in Township Twenty-seven, Range Four, West.

All Lot Six, containing 38.41 acres, and all that part of Lot Nine, lying north of the center line of Mill Bayou; containing 29.21 acres, except five acres heretofore conveyed to Coahoma County on May 20, 1909, by deed recorded in Book 24 at page 301 of the Record of Land Deeds in the office of the Chancery Clerk of said County at Clarksdale, Mississippi, and except three acres conveyed to M. K. Wildberger by deed dated November 21st, 1919, and not yet of record, which said three acres is described as follows:

Beginning at an iron stake in the line dividing Sectional Lots Eight and Nine, about two hundred feet North of the center line of Mill Bayou;
146 thence north along the dividing line between said Lots Eight and Nine a distance to give a frontage of two acres to an iron stake; thence west a distance to give a depth of 1½ acres to an iron stake; thence south parallel to said dividing line between said Lots Eight and Nine a distance to give a length of two acres to an iron stake; thence east and perpendicular to the dividing line between said Lots Eight and Nine to the iron stake at the point of beginning.

The total acreage herein conveyed being 67.62 acres and all being in Section Fourteen, Township Twenty-seven, Range Four, West; also three acres in the southeast corner of Lot Nine north of Mill Bayou, in Section Fourteen, Township Twenty-seven, Range Four, West, more particularly described as follows:

Beginning at a stake on the line dividing Lots Eight and Nine about two hundred feet from the center of Mill Bayou and north of said Bayou; thence north along the dividing line between said Lots Eight and Nine a distance to give a frontage of two acres to an iron stake; thence west a distance to give a depth of 1½ acres to an stake; thence south parallel to the dividing line between Lots Eight and Nine aforesaid to a stake; a distance to give a depth of two acres; thence east and perpendicular to the dividing line between Lots Eight and Nine to the point of beginning; also the following described property situate in the City of Clarksdale, County and State aforesaid, to-wit: Lot One and the eastern half of Lot Two; Lot Six and the eastern half of Lot Five, all in Block Sixteen in Oakhurst Subdivision, Lots Number
147 Three and Four and the East Half of Lot Five and the West Half of Lot Two of Block Sixteen of Oakhurst Subdivision. Lots One and Two in Block Nine in the Oakhurst Subdivision.

Also, the following described property in Coahoma County, Mississippi, to-wit:

Lots numbered One to Ten, inclusive, in Block Eleven of the Dolan and Peacock Oakhurst Addition to the City of Clarksdale, Coahoma County, Mississippi.

And the said property is hereafter called "the real property"; and that all transfers and conveyances of

said real property described in the pleadings, and attached therein, are hereby adjudged and decreed fraudulent and void as to the receiver and the plaintiffs herein; and the same are hereby canceled and for naught held.

And the transfer and conveyance of those certain judgments of the Missouri State Life Insurance Company vs. W. P. Holland, described as follows:

No. 111, At Law, United States District Court, in the sum of $240,524.02, rendered January 27, 1923; and

No. 126, At Law, United States District Court, in the sum of $96,579.31, rendered March 24, 1924, which said judgments were transferred and sold by the Missouri State Life Insurance Company to Lacy C. Townes by transfer of date the.....day of September, 1927, by him transferred and assigned to the Oakhurst Company by transfer of date the 2 day of June, 1928, were, and are, fraudulent assignments, and said judgments are decreed to be as to the plaintiffs in this cause void and of no effect, said judgments being hereby decreed to be the property of Florence T. Holland as to plaintiffs herein.

That William A. Schmitt, receiver, is hereby also appointed commissioner of this Court with
148 full power and authority to sell said real property at such time and in such manner as he may determine, after giving public notice thereof for three weeks preceding the date of sale by posting upon the bulletin board of the Courthouse of Coahoma County, Mississippi, at Clarksdale, and by publishing in some newspaper published in Coahoma County, Mississippi, for three weeks preceding the date of said sale.

Said commissioner shall sell the said property in parcels or as a whole as he may determine may be to the best interests of the parties concerned. Said sale shall be made for cash; and the plaintiffs in said cause may bid at said sale as cash by offering to said commissioner a receipt for the amount of such bid for credit upon the several judgment debts due them, as set forth in this decree.

The proceeds of said sale, after deducting the costs and expenses thereof to be fixed and determined by this Court upon the confirmation thereof, shall be distributed to the several plaintiffs in the proportions which each respective judgment bears to the aggregate total of the judgments. The said defendants in said cause, and each of them, are hereby directed to forthwith deliver to said commissioner the possession of said property.

The said Florence T. Holland, her agents, attorneys and representatives, including W. P. Holland, her agent, are hereby ordered and directed to turn over to the receiver, William A. Schmitt, all books, papers, accounts, correspondence, memoranda, records, of every kind, character, and description, now in the hands of the said Florence T. Holland, her agents, attorneys and representatives, or held for them by any person, relative to the estate of Florence T. Holland and especially correspondence and records of every nature with regard to deposits, trading ac-
149 counts, safety deposit boxes, etc., all of such accounts and correspondence in whatsoever name carried, said records, and accounts mentioned in said paragraph .... to be redelivered to said Florence T. Holland within one year from this date.

Any and all persons, firms, corporations and associations of persons, are hereby enjoined and restrained from interfering with or molesting the said receiver in his possession, management, and control of the

property delivered, or to be delivered, recovered, or to be recovered, by him under the orders of this Court.

Said receiver is hereby invested with full power and authority to institute and/or prosecute in any Court of proper jurisdiction at law or in equity any suit or proceeding against any and all persons whosoever seeking to recover possession and/or control and/or damages in connection with the rights hereby vested in him.

It is further ordered, adjudged and decreed by the Court that no personal judgment against the said Florence T. Holland is hereby rendered on account of any of the matters and things hereinbefore recited or on account of any of the matters and things complained of in the pleadings in the causes hereinbefore stated and the said receiver, or his successor in office is hereby directed to convey to W. H. Powell by quit-claim deed, all of the residence property of the said Florence T. Holland, described as follows, to-wit:

Lots six and seven, block I, in the town of Clarksdale, as described by a map of W. L. Polk being made in eighteen hundred and eighty-eight and being the present homestead of Florence T. Holland, and all of the furniture now in said residence in the City of Clarksdale, Mississippi, and all of the appurtenances appertaining thereto, and also any and all jewelry that she may now own and also all household and kitchen furniture, rugs, also all the household furniture and fixtures, including all rugs, draperies, curtains, dishes, and linens, silver and table ware, knives and forks, and silver plate, pictures, stationery, books, guns, and all other personal property of every like kind and descriptions in said residence, now in said residence, and also the boats in Moon Lake and Chrysler automobile and Packard car, and Ford Auto Truck, mentioned in this decree, and also

the Johnson Motor at Moon Lake menticned in this decree; and all live stock, horses and cattle at or belonging to or used in and about the said residence of said Florence T. Holland (this of course does not include live stock or implements of any plantation), and the said property hereby ordered to be conveyed by the receiver to W. H. Powell shall be forever exempt from any of the present claims of the parties plaintiff and/or interveners in this suit, the parties plaintiff and interveners expressly agreeing thereto in open Court and likewise said Florence T. Holland are agreeing to the matters and things in this decree contained; the Planters Manufacturing Company not to be prejudiced hereby or William E. Lamb or Butler, Lamb, Foster and Pope not to be prejudiced hereby. The receiver's bond being presented to the Court is hereby approved in open Court.

This 30th day of April, 1930.

E. R. HOLMES, Judge.

P. C. C.
W. H. C.

Approved:
FLORENCE T. HOLLAND,
E. W. S.
CUTRER & SMITH,
GERALD FITZGERALD,
G. EDW. WILLIAMS.

151 Filed May 2, 1930.

---

152 (Title Omitted.)

There came before this Court this day for hearing the citation issued on April 21, 1930. against William E. Lamb, in the above entitled cause, said William

E. Lamb appearing in person and plaintiffs and interveners being represented by their counsel Messrs. Gerald FitzGerald, Sam C. Cook and Garner Green.

By agreement of the parties, it is hereby ordered that said hearing on said citation be continued until June 9, 1930, at ten o'clock A. M., at Biloxi, Mississippi, before the undersigned Judge.

Dated April 30, 1930.

E. R. HOLMES, Judge.

Filed April 30, 1930.

---

153 ANSWER OF WILLIAM E. LAMB TO PETITION FILED IN THIS CAUSE ON APRIL 21, 1930, AND TO THE CITATION ISSUED THEREON.

(Title Omitted.)

Now comes William E. Lamb appearing in this cause specially and for the sole purpose of answering the citation issued herein and served upon him on or about April 21, 1930, and answering the petition upon which said citation was issued, and not otherwise, and for answer thereto, or unto so much thereof and such parts thereof as he is advised that it is material or necessary for him to make answer unto, answering says:

I.

Answering paragraphs 1, 2, and 3 of said petition he says that he and the firm of Butler, Lamb, Foster & Pope, of which he is a member, and each of the members thereof, were wholly without knowledge of

any of the matters and things in said paragraphs alleged at the time or times they are alleged to have taken place; that they or any of them did not at any time counsel or advise, in any manner or form whatsoever, regarding said transactions as alleged in said paragraphs or regarding any other transactions that in any other guise or manner could or would purport to accomplish the results as alleged in said paragraphs.

154 II.

Answering paragraphs 4, of said petition he denies that he or the said firm of Butler Lamb, Foster & Pope, or any member thereof, at any time, in any manner or form whatsoever, conspired either among themselves or with W. P. Holland or Florence T. Holland, or either of them, or with any other person whomsoever, to have transferred, set over or assigned to him or said firm, or any one of them, any part of any trust fund or of any property of any kind or character in which plaintiff and interveners herein, or any of them had any interest whatsoever, or rights thereto, or lien thereon.

He further denies that he or said firm of Butler, Lamb, Foster & Pope or any member thereof, received from said Florence T. Holland or from W. P. Holland, or either of them, any money or other property constituting part of any trust fund, or any money or other property of any kind or character in which plaintiff or interveners herein, or any one of them, have or had any interest whatsoever, or right thereto or lien thereon, or any money or other property which was under the control or custody of this Court in any manner or form whatsoever.

He further denies that the original or supplemental bill of complaint in this cause, or any other pleading,

notice or instrument of any kind or character in this cause or in any other cause pending at any time in the State or Federal Courts of Mississippi, caused any money or property of any kind or character in the hands of said Florence T. Holland to constitute a trust fund for the benefit of the plaintiff and interveners herein or any of them or that said pleadings or instruments aforesaid, or any of them, gave to plaintiff and interveners or any of them, any right in or title to or any lien upon any money or personal property in the hands of said Florence T. Holland or that said pleadings and instruments aforesaid or any of them constituted notice to anyone that any money or property of any kind or character in the hands of said Florence T. Holland constituted a trust fund for the benefit of plaintiff or interveners, or any of them, or that said plaintiff and interveners or any of them had any interest whatsoever in any money or personal property in the hands of said Florence T. Holland or any right thereto or lien thereon.

155

He further denies that at any time prior to April 22, 1930, when the Court entered a temporary injunction in this cause any personal property in the possession of said Florence T. Holland was ever within the custody of or under the control of this Court as a trust fund or otherwise or that it was in anyway subjected to the restraint or control of this Court or that its disposition by said Florence T. Holland was restricted in any manner or form.

III.

Answering paragraph 5 of said petition he and said firm of Butler, Lamb, Foster & Pope and each of the members thereof are without knowledge as to any of the matters and things in said paragraph 5 alleged,

except that he admits the estate of said Florence T. Holland is not as great as that alleged by plaintiff in said original bill filed in cause No. 129.

IV.

Further answering paragraph 5, he denies there was ever any attempt on his part or on the part of any other member of said firm of Butler, Lamb, Foster & Pope, individually or collectively either contemptuously or contumaciously, or in any manner whatsoever, to get rid of any of the property of said Florence T. Holland and he and said firm of Butler, Lamb, Foster & Pope and each member thereof are without knowledge of any transfers in said paragraph referred to by said Florence T. Holland of any of her properties in any unlawful or covenenous manner and are without knowledge of transfers of various other properties or moneys in said paragraph referred to, if any, by covenous practices or fraudulent schemes, or in any manner whatsoever.

V.

Further answering said petition said William E. Lamb shows that the only property of any kind or character ever received by him or by said firm of Butler, Lamb, Foster & Pope or by any
156 member thereof from said Florence T. Holland or W. P. Holland, or either of them, consisted of checks or drafts and notes, as hereinafter set forth, and that the same were received in the ordinary course of business, in good faith, in payment on account of professional legal services rendered as set forth hereinafter, or for reimbursement of expenses incurred and paid in connection with performance of such services. He denies that a total of $90,000.00 was so received and shows that the total received as

fees and reimbursements of cash disbursements paid exclusive of interest payments on notes and exclusive of one note which has not been paid, was $68,220.54 as hereinafter set forth in detail.

VI.

Further answering said petition said William E. Lamb shows that he is and was during all of the times herein mentioned, an attorney at law, duly admitted to practice in the Supreme Court of the State of Illinois, being the highest Court in said State, with his office in Chicago, Illinois, and is and was during all of said time a resident and citizen of the State of Illinois and that he is and was during all of said time a member of the bar of the Supreme Court of the United States and, as a non-resident attorney of the Northern District of Mississippi, pursuant to the rules of this Court, he was duly admitted to practice in this Court on or about October 21, 1929.

VII.

Further answering said petition said William E. Lamb says he was first consulted by said Florence T. Holland with reference to professional employment by her on or about August 1, 1928; that on or about August 7, 1928, he accepted employment to represent her in a proceeding before the United States Bureau of Internal Revenue involving a hearing be-
157 fore said Bureau in which she and W. P. Holland, her husband, had been served with notice and subpoenaed to appear and subject themselves to examination under oath and bring with them all books and papers kept by them concerning the properties and incomes of said Florence T. Holland and said W. P. Holland covering the years 1916, to 1927, inclusive. From the date of employment afore-

said to August 16, 1928, when oral hearing in said tax proceeding commenced at Washington, D. C., said William E. Lamb, Karl D. Loos and E. Barrett Prettyman, members of said firm of Butler, Lamb, Foster & Pope were engaged in preparing for said hearing, examining books and records, and in constant consultation with said Florence T. Holland and W. P. Holland and with J. R. Clinton, a certified Public Accountant of Clarksdale, Mississippi, and with G. Edward Williams, attorney of Clarksdale, Mississippi; that at said hearing commencing on August 16, 1928, representatives of the Bureau of Internal Revenue made claim for additional income taxes from said Florence T. Holland in a large sum; that said oral hearing continued for two days or more and immediately following said hearing auditors of said Bureau of Internal Revenue, for a period of approximately six weeks, examined the books of said Florence T. Holland, and W. P. Holland; that during such examination said Karl D. Loos and E. Barrett Prettyman were in frequent conference with said auditors, furnishing additional data and information and reconciling differences and upon completion of the audit an agreement was reached with the auditors upon a computation of Federal income tax of said Florence T. Holland for the years 1916 to 1927, inclusive showing additional taxes due in the total amount of $48,713.89, an amount very much less than had been claimed by said Bureau against said Florence T. Holland; that said agreement was reached on or about October 24, 1928, conditioned on its acceptance by said Florence T. Holland on or before October 31, 1928; said computation of taxes as proposed by the Bureau was accepted by said Florence T. Holland and the taxes paid, together with interest thereon; thereafter a closing agreement was entered into in accordance with Section 606 of the Revenue Act of 1928,

158

whereby all income taxes of said Florence T. Holland for 1916 to 1927, inclusive were definitely and finally settled; and said closing agreement was executed by the Secretary of the Treasury on or about October 24, 1929, and thereafter delivered to said Florence T. Holland, said employment in connection with federal income taxes was undertaken before and was separate and distinct from any employment with respect to any of the suits then pending against said Florence T. Holland or W. P. Holland or any of the suits thereafter brought.

VIII.

Further answering said petition said William E. Lamb says that in addition to the taxes claimed against said Florence T. Holland as aforesaid, the Government claimed additional taxes for 1917 to 1920, inclusive, against W. P. Holland in the total amount of $681,163.40 which said amount had been assessed against W. P. Holland in February, 1924; that said Bureau of Internal Revenue sought to enforce collection of said additional taxes assessed against said W. P. Holland, from the estate of Florence T. Holland and if it had been successful in that effort, collections of such additional taxes with interest from February, 1924, would have wiped out the entire estate of Florence T. Holland, including all of the money and property turned over to the receiver appointed by the Court in the final decree entered in this cause; that said William E. Lamb, and said firm of Butler, Lamb, Foster & Pope were employed by said Florence T. Holland to contest the efforts of the Government to collect from her the said taxes assessed against said W. P. Holland and in pursuance of that employment said William E. Lamb and his associates in said firm held numerous conferences with representatives of

159 the Bureau of Internal Revenue and sought to secure reduction in the amount of taxes claimed against said W. P. Holland. In pursuance of its claim against said Florence T. Holland the Government on October 15, 1928, filed its petition of Intervention in cause No. 128 in Equity then pending in this Court on removal from the Chancery Court for the Second District of Coahoma County, Mississippi, which cause was thereafter remanded to the State Court; that thereafter the Government also filed petition of Intervention in cause No. 129 on or about December 17, 1928; that in each of said petitions of intervention the Government sought to enforce against the estate of said Florence T. Holland its claim for additional taxes against W. P. Holland as aforesaid in the amount of $681,163.40 together with interest thereon from February, 1924, and alleged and claimed that the claims, of plaintiff and interveners herein were junior and inferior to the claim of the Government for taxes as aforesaid; that said William E. Lamb and said firm resisted the petitions of intervention so filed by the Government and filed motions to dismiss same on the ground, among others, that the collection of said taxes claimed against W. P. Holland was barred by the Statute of Limitations; the claim that said taxes were barred by the Statute of Limitations was also presented orally to the representatives of the Bureau of Internal Revenue at Washington and without said motion to dismiss having been heard by the Court, the Government on the second day of the trial of this cause, dismissed or withdrew its petition of intervention in this cause; the Government thereby abandoned its claim against the estate of Florence T. Holland which was thereafter placed in the hands of the receiver appointed pursuant to the final decree entered in this cause.

IX.

Further answering said petition said William E. Lamb says that in addition to their employment in connection with the additional income taxes claimed against said Florence T. Holland as aforesaid and in connection with the claim of the Government for taxes assessed against W. P. Holland which were
160 sought to be collected from the estate of Florence T. Holland, *he and said firm of* Butler, Lamb, Foster & Pope were also employed by said Florence T. Holland, in association with other counsel in Clarksdale, Mississippi, to defend her in this cause and in other suits pending against her and against W. P. Holland in both Federal and State Courts; that he entered upon this employment actively on or about December 1, 1928; that pursuant to such employment he and certain of his associates participated in the preparation of numerous pleadings in the various causes, in preparing briefs and arguments, attending the taking of depositions pursuant to notices served by attorneys for plaintiff, presenting and arguing various motions and participating in the trial of this and other causes.

X.

Further answering said petition said William E. Lamb says that in performing the services pursuant to his employment in the matters aforesaid, he and other members of said firm of Butler, Lamb, Foster & Pope and associates and clerks in said firm devoted large amount of time to said matters; that most of the time devoted to the matter of the defense against said additional income tax claimed against said Florence T. Holland was separate and apart from any services in connection with the litigated cases afore-

said and was prior to the date when he and said firm engaged actively in services in connection with said litigated cases; that the time devoted to the defense of said Florence T. Holland against claim of the Government on account of taxes assesssed against W. P. Holland as aforesaid was principally spent in connection with and contemporaneously with the
161 time devoted to the litigated cases as aforesaid; that the services performed in connection with the defense against additional income taxes claimed against Florence T. Holland as aforesaid and in connection with the defense of said Florence T. Holland against claim of the Government for collection from her of taxes assessed against W. P. Holland as aforesaid were of substantial importance and of great value in the preservation of the estate of Florence T. Holland and were of benefit and value to the plaintiff and interveners in this cause as creditors of said Florence T. Holland and said services resulted in the observation of her estate which has since been turned over to the receiver appointed by the consent decree entered in cause 129, and held by said Receiver for the benefit of interveners herein.

XI.

Further answering said petition said William E. Lamb says that payments to him and to said firm of Butler, Lamb, Foster & Pope as fees for services rendered in connection with the matters in paragraphs VII, VIII, IX and X, set forth, were received as follows:

Aug. 7, 1928	Check of Florence T. Holland on Planters National Bank of Clarksdale...	$10,000.00
Aug. 7, 1928	Note of Florence T. Holland	15,000.00

June 12, 1929	Note of Florence T. Holland plus interest 6 months $333.33	12,500.00
June 12, 1929	Note of Florence T. Holland plus interest 6 months $333.33	12,500.00
Oct. 21, 1929	Draft of Planters National Bank	10,000.00
Dec. 16, 1929	Note of Florence T. Holland	12,500.00

161 Said check for $10,000.00 and said note of $15,000.00 received August 7, 1928, were paid exclusively on account of service in connection with the tax cases aforesaid and were not in any way payments on account of any services whatsoever in connection with any of the litigated cases and at that time no employment in connection with the litigated cases had been accepted by said William E. Lamb or said firm of Butler, Lamb, Foster & Pope. The three notes and the draft of $10,000.00 subsequently received were payments on account of services without separation as between services for tax matters and services in connection with the litigated cases, but applied on account of all services in all matters.

Said check for $10,000.00 received August 7, 1928, was a check of Florence T. Holland drawn on the Planters National Bank of Clarksdale, payable to Butler, Lamb, Foster & Pope, and by said firm deposited and collected.

The note of $15,000.00 received August 7, 1928, was a note signed by Florence T. Holland, payable December 7, 1928; at maturity it was not paid, but interest thereon of $250.00 was paid, and two new notes in renewal thereof were executed, one for $3,750.00 due March 7, 1929, and one for $11,250.00 due June 7, 1929; said renewal notes were discounted and sold by said firm of Butler, Lamb, Foster & Pope in the

usual course of business and for value to the Union Trust Company, as a bona fide purchaser for value; said Union Trust Company was a banking institution engaged in business at Chicago, Illinois, and it thereafter and before the maturity of said notes became merged or consolidated with the First National Bank of Chicago; that upon maturity of the first of said notes there was forwarded to said First National Bank of Chicago in payment of said note for $3,750.00 due March 7, 1929, a draft in the sum of
163 $3,796.87, including $46.87 interest, drawn on the Continental and Commercial National Bank of Chicago by the Planters National Bank, of Clarksdale, and photostat copy of said draft is attached hereto marked Exhibit A; that upon maturity of the second of said notes there was forwarded to said First National Bank in payment of said note of $11,250.00 due June 7, 1929, a draft in the sum of $11,531.25, including $281.25 interest, drawn on the Continental and Commercial National Bank of Chicago by said Planters National Bank of Clarksdale, and photostat copy of said draft is attached hereto marked Exhibit B; both of said drafts, Exhibits A and B aforesaid, were paid through the Chicago Clearing House to said First National Bank.

Said two notes received June 12, 1929, were discounted and sold by said firm of Butler, Lamb, Foster & Pope in the usual course of business and for value to said First National Bank of Chicago, a bona fide purchaser for value, on or about June 12, 1929, said firm receiving credit therefor in the total amount of $24,866.73; upon maturity of said notes on or about December 14, 1929, there were forwarded to said First National Bank two drafts each in the amount of $12,833.33 drawn on the Continental and Commercial National Bank of Chicago by said Planters National Bank, being in payment of said two notes, and photostat copies of same are attached hereto as Exhibits C

and D respectively; and said drafts were paid through the Chicago Clearing House.

Said draft of $10,000.00 received by said firm of Butler, Lamb, Foster & Pope on October 21, 1929, was dated October 18, 1929, and drawn on the Guarantee Trust Company of New York, by said Planters National Bank, payable to Butler, Lamb, Foster & Pope, the same being deposited by said firm in the usual course of business in the First National Bank of Chicago, and a photostat copy of same is attached hereto as Exhibit E.

164

Said note for $12,500.00 received December 16, 1929, has not been paid.

XII.

Further answering said petition said Wliliam E. Lamb says: That the foregoing moneys and notes are all of the payments received by him or by said firm of Butler, Lamb, Foster & Pope on account of services performed for Mrs. Florence T. Holland or W. P. Holland; that in addition to the payments for services as aforesaid he and the said firm have received the following amounts as reimbursement for cash expenses paid by him or by said firm as necessary disbursements in connection with the performance of legal services as aforesaid:

Sept. 16, 1928	$ 500.68
Oct. 28, 1928	20.78
Dec. 17, 1928	146.55
Oct. 21, 1929	50.00
Nov. 5, 1929	5.00
Nov. 22, 1929	100.00
Nov. 25, 1929	250.00
Dec. 6, 1929	100.00
Dec. 28, 1929	250.00
Feb. 4, 1930	3,865.93

Feb. 19, 1930	.....	100.00
Mar. 10, 1930	.....	310.10
Apr. 9, 1930	.....	711.17
Apr. 9, 1930	.....	1,760.33
		$8,220.54

All the foregoing payments of cash disbursements were made by check of Florence T. Holland to the order of Butler, Lamb, Foster & Pope or to
165 the order of William E. Lamb or to the order of G. C. Lenington, a stenographer employed by said firm, except the sum of $250 which was paid to William E. Lamb on November 25, 1929, in currency. The foregoing payments constitute all payments received by said William E. Lamb or by said firm so far as can be determined from a careful search of the records of said William E. Lamb and of said firm and no other amounts, either of money or notes or property of any kind or character, were ever received by said William E. Lamb or by said firm from Florence T. Holland or said W. P. Holland or from anyone for their account; that said William E. Lamb and his associates in said firm of Butler, Lamb, Foster & Pope received from time to time from said Florence T. Holland or W. P. Holland railroad tickets for use in taking trips incident and necessary to the performance of services in connection with the matters aforesaid but in all such instances the moneys were not paid to him or to said firm but were paid direct to the carrier; that on one occasion also said Florence T. Holland paid hotel bill for said Loos and said Lenington, the payment therefor being made direct to the Hotel Alcazar and said money was not paid to said William E. Lamb or to said firm.

XIII.

Further answering said petition, said William E. Lamb says that at the time said check of $10,000.00

and said note of $15,000.00 were received on or about August 7, 1928, he and said Butler, Lamb, Foster & Pope and each, and all of the members thereof, were without knowledge or information as to the litigation pending in the Federal and State Courts of Mississippi except the mere fact that there were suits on file, and they and each of them were without knowledge or information, either actual or constructive, of the source from which the money represented by said
166 check came; that at the time of the payments of the notes by drafts of the Planters National Bank as aforesaid and at the time of the transmission of the draft to Butler, Lamb, Foster & Pope in the sum of $10,000.00 on or about October 21, 1929, said William E. Lamb and said firm and each of the members thereof were without knowledge or information, either actual or constructive, of the source from which the Planters National Bank received the consideration for which it issued said drafts, Exhibits A to E, inclusive, or with what funds or out of what funds or in what manner or form said drafts were purchased from or paid for to said Planters National Bank. Said William E. Lamb and said firm and its members or any of them did not know at the time of such payments how said notes of Florence T. Holland were paid to said First National Bank of Chicago and did not learn thereof until after service of the citation herein.

Said William E. Lamb further says that to the best of his knowledge and belief said First National Bank of Chicago or any of its officers or representatives did not know the source from which the Planters National Bank received the consideration for said drafts sent to it and did not know with what funds or from what funds or the manner in which payment was made to the Planters National Bank for said drafts.

Said William E. Lamb and said firm were also without knowledge or information as to the source of

the moneys which were paid to them in reimbursement of cash disbursements as aforesaid, except that they knew that such payments as were made by checks from the account of said Florence T. Holland in the Planters National Bank, but they were without information as to the source from which said Florence T. Holland acquired the funds in her account in said bank.

XIV.

167 Further answering said petition, said William E. Lamb says that the service performed by him and by said firm in connection with the defendant against the claims of the Government on account of additional income taxes claimed against Mrs. Florence T. Holland were reasonably worth the sum of $50,000.00 and such sum would be a usual and customary fee for such services as last aforesaid; that said services resulted in a saving to the estate of Mrs. Florence T. Holland of a large sum, being the difference between the tax tentatively claimed by representatives of the Bureau of Internal Revenue at the time of the oral hearing in Washington on or about August 16, 1928, as aforesaid, and the amount which the Government accepted in full payment of all claims for additional taxes against said Florence T. Holland for the years 1916 and 1927, inclusive, as aforesaid.

The service performed by him and by said firm in connection with the defense of the estate of said Florence T. Holland against the claims of the Government seeking to collect against her the taxes assessed against said W. P. Holland in the sum of $681,163.40, together with interest thereon from February 1, 1924, as aforesaid, and in the defense against the petitions of intervention filed by the Government as aforesaid, were reasonably worth the sum of $25,000, and such sum would be a usual and customary fee for such services as last aforesaid; that said services resulted in

the complete rejection and withdrawal of said claim of the Government; that said William E. Lamb upon information and belief says that the plaintiff and interveners herein made no defense whatever to the Government's claim or to the petition of intervention filed herein which asserted a claim on behalf of the Government paramount and superior to the
168 claims of said plaintiff and interveners herein; and the defense made by said William E. Lamb and said firm on behalf of said Florence T. Holland was the only successful defense made to the Government's petition of intervention and was responsible for the Government's dismissal thereof.

Said services so performed in connection with the defense against the Government's claims for taxes as aforesaid, both with respect to the taxes claimed on income of said Florence T. Holland and the taxes assessed against said W. P. Holland, were to the benefit and advantage of the plaintiff and interveners herein and to the benefit and advantage of all others who may hereafter have or claim any interest in or to any part of the estate of said Florence T. Holland; and the service so performed in connection with said matters were reasonably worth all and more than the total amount of moneys and notes received by said William E. Lamb and said firm as aforesaid.

XV.

Further answering said petition said William E. Lamb says that the services rendered by him and by said firm in connection with the litigated cases as aforesaid, which cases involved amounts claimed by the interveners in said cause 129 in excess of $7,000.00 were valuable and important services rendered Florence T. Holland; that said services were rendered in good faith and in the usual course of business and in the belief that said services would be paid for in the

ordinary and usual course and the said William E. Lamb and all of the members of said firm of Butler, Lamb, Foster & Pope, so far as they had any information or belief regarding said matters, were of the honest belief that all of the property in the hands of Florence T. Holland belonged to her and was her property in law and in fact and that any transfers made by said W. P. Holland to said Florence T. Holland had been made in good faith and for valuable
169 consideration and without fraud or intent to defraud or hinder or delay any creditor or creditors whatsoever and that said services were not rendered for the purpose of hindering and delaying creditors of W. P. Holland or Florence T. Holland but solely in the belief that the claim of interveners and plaintiff in case 129, were illegal and void, against W. P. Holland and as against Florence T. Holland, and the total of all payments which may have been received on account of services rendered in said litigated cases was less than reasonably adequate compensation for the services so rendered.

XVI.

Further answering said petition said William E. Lamb says that during the performance of the aforesaid services the fact that said William E. Lamb and said firm of Butler, Lamb, Foster & Pope were employed to act and in good faith did and were in fact acting as attorneys for said Florence T. Holland in all said litigated cases and the magnitude of the time given by them to such services were fully known and understood by plaintiff and interveners herein and their counsel, but notwithstanding such knowledge no injunction pending the final disposition of the said cause 129 or any other cause was applied for or obtained preventing said Florence T. Holland from making payments to any person and no action was taken

by plaintiff or interveners to have placed in the custody of the Court by receivership or other appropriate measure the property of said Florence T. Holland which was sought to be reached by plaintiff and interveners in cause 129 or in other suits pending the final disposition thereof; and plaintiff and interveners herein and their counsel are now estopped to
170 object to any of said payments on account for services, or cash disbursements returned as aforesaid or to undertake to recover any proceeds derived by said William E. Lamb or said firm of Butler, Lamb, Foster & Pope from notes of said Florence T. Holland or moneys paid by her to said firm for services or any repayment of cash disbursements as aforesaid, in the manner and form hereinbefore set out.

XVII.

Further answering said petition said William E. Lamb says that at all times when payments for services or cash disbursements as aforesaid were received by him or by said firm, said Florence T. Holland had in her own right a separate estate over and above any estate represented by or derived from transfers of cash or property, real or personal, of any kind or character, from said W. P. Holland to her; that said separate estate at the time of each and every payment received by said William E. Lamb or by said firm for services or cash disbursements as aforesaid was in excess of the amount so paid and that the total amounts received by said William E. Lamb and by said firm both as payments for services and as payments for cash disbursements as aforesaid were less than the total amount of said separate estate of said Florence T. Holland after making full allowance for expenditures, if any, therefrom, or depletion, if any thereof.

XVIII.

Further answering said petition said William E. Lamb says that said petition was filed by and in the name of plaintiff only and not in the name of or on behalf of any of the interveners; that the total claim of plaintiff was for the sum of $36,032.78, with interest, and in the final decree entered in cause 129 the correct amount of plaintiff's claim was found
171 to be $19,653.63; but no judgment was rendered in favor of said S. B. Cramer; that heretofore on or about the 1st day of May, 1930, the receiver appointed by this Court took into custody, pursuant to said final decree, property and money of a value greatly in excess of the amount of plaintiff's claim; that at all times when said William E. Lamb or said Butler, Lamb, Foster & Pope received any payments of moneys or notes for services or in reimbursement of cash disbursements as aforesaid, the estate remaining in the hands of Florence T. Holland was always greatly in excess of the amount of plaintiff's claim as aforesaid, and said estate was at all times greatly in excess of the amount of any and all claims asserted in said cause 129, against said estate prior to April 17, 1930, by plaintiff and interveners (other than the United States of America, whose intervention has heretofore been dismissed or withdrawn as aforesaid).

XIX.

Further answering said petition said William E. Lamb denies that said plaintiff or interveners herein or any of them are entitled to any of the relief prayed in said petition or to any relief of any kind or character whatsoever against him or against said firm of Butler, Lamb, Foster & Pope or any member thereof.

XX.

Answering said citation served upon him on or about April 21, 1930, pursuant to said petition, said William E. Lamb adopts for answers to said citation all of the foregoing answer to said petition and without repetition makes the same answer to said citation as hereinbefore set forth in answer to said petition.

Now, having fully answered both said citation and said petition, said William E. Lamb prays that he be held to have committed no contempt as in the petition alleged or as in the citation charged, and that he be fully and completely exonerated from all charges herefor, and fully and completely discharged from said citation, and that the same be discharged as against him; that the said petition be dismissed as against him, and that he be hence dismissed with his costs, etc.

172

WILLIAM E. LAMB,
W. C. WELLS,
Atty. for William E. Lamb.

State of Illinois,
County of Cook, ss.

William E. Lamb, being duly sworn, doth depose and say that he is the person named in the foregoing answer, that he has read the same and knows the contents thereof and that the same is true to his own knowledge, except such allegations as are therein stated to be on information and belief and those he believes to be true.

WILLIAM E. LAMB.

Subscribed and sworn to before me this 16th day of May, 1930.

FRANCES C. ROBERTSON,
(Seal) Notary Public.

My commission expires April 16th, 1934.

173 EXHIBIT A.

The Planters National Bank 85-120
of Clarksdale.

Clarksdale, Miss., Mar. 5-1929. No. 258012.

Pay to the
Order of First National Bank, Chicago $3796.87

Planters
National Bank $3796 & 87 cts. Dollars.

To Continental and Commercial
National Bank of Chicago, Illinois.

2-3 E. P. GRAVES,
A-Cashier.

Registered.
W. B. KING,
Teller.

(Back)

FLORENCE HOLLAND.

Paid 3-8-29. 2-3.

Paid through Chicago Clearing House
Mar.-8-29
to the
First National Bank, Chicago, Ill.

102,749031
154,152431

25690146

174 EXHIBIT B.

The Planters National Bank of Clarksdale. 85-120

Clarksdale, Miss., June 6, 1929. No. 258377.

Pay to the
Order of First National Bank of Chicago $11531.25

Planters
National Bank $11531 & 25 cts. Dollars.

To Continental and Commercial
National Bank of Chicago, Illinois.

2-3 N. D. SESSION,
Vice-President.
Cashier.

E. P. GRAVES,
Teller.

(Back)

HOLLAND.

Paid through Chicago Clearing House
I
Jun-8-1929 B
to the
First National Bank.

To the Order of Any Bank or Banker.
Prior Indorsements Guaranteed.
2-1 First National Bank of Chicago, Illinois. 2-1

175 EXHIBIT C.

The Planters National Bank 85-120
of Clarksdale.

Clarksdale, Miss., Dec. 14, 1929. No. 258471.

Pay to the
Order of First National Bank of Chicago $12833.33

Planters
National Bank $12833 & 33 cts Dollars.

To Continental and Commercial
National Bank of Chicago, Illinois.

2-3 N. S. SESSIONS,
Vice-President.
Cashier.

R. N. BALTZER,
Teller.

(Back)

Paid through Chicago Clearing House
1.
Dec. 16-1929.
to the
First National Bank.

Pay to the Order of Any Bank or Banker.
Prior Indorsement Guaranteed.
2-1 First National Bank of Chicago, Illinois. 2-1

N.
Dec. 16,
1929.

176 EXHIBIT D.

The Planters National Bank of Clarksdale. 85-120

Clarksdale, Miss., Dec. 14, 1929. No. 258472

Pay to the
Order of First National Bank of Chicago $12833.33

Planters
National Bank $12833 & 33 cts. Dollars.

To Continental and Commercial
National Bank of Chicago, Illinois.
2-3 N. B. SESSIONS,
Vice-President.
Cashier.

Registered.
R. N. BALTZER,
Teller.

(Back)

Paid through Chicago Clearing House
1.
Dec. 16, 1929.
to the
First National Bank.

Pay to the Order of Any Bank or Banker.
Prior Indorsements Guaranteed.
2-1 First National Bank of Chicago, Illinois. 2-1

N.
Dec. 16,
1929.

177 EXHIBIT E.

The Planters National Bank 85-120
of Clarksdale.

Clarksdale, Miss., Oct. 18, 1929. No. 1638.

Pay to the
Order of Butler, Lamb, Foster and Pope, Attys.
$10,000.00

Planters
National Bank $10000.00 cts. Dollars.

To Guaranty Trust Company of New York, New
1-23 York.

N. B. SESSIONS,
Vice-President.
Cashier.

(Back)

Pay to the Order of Any Bank or Banker or Trust Co.
All Prior Indorsements Guaranteed.
Oct. 21, 1929.
2-1 First National Bank, Chicago, Ill. 2-1"*L
R. F. Newhall, Cashier.

First National Bank
4326 or order
Chicago, Ill.
BUTLER, LAMB, FOSTER
& POPE.

Filed May 19, 1930.

178 (Title Omitted.)

Comes now William E. Lamb, having heretofore appeared in this cause specially and for the sole purpose of answering the citation issued herein and served upon him on or about April 21, 1930, and answering the petition upon which said citation was issued, and not otherwise, and now saving and reserving his appearance as aforesaid, does hereby by his attorney, W. Calvin Wells, appear specially for the sole purpose of moving the Court to quash the citation aforesaid and to dismiss the petition aforesaid, and for no other purpose, on the ground that the Court was and is without jurisdiction therein for the following reasons:

1. The petition upon which the citation was issued is insufficient to confer any jurisdiction upon this Court; to confer any jurisdiction upon this Court over the subject matter thereof; or to confer any jurisdiction upon this Court over respondent William E. Lamb.

2. The Court was without jurisdiction to order issuance of any citation on the petition filed.

3. The citation is insufficient to confer any jurisdiction upon this Court; to confer any jurisdiction upon this Court over the subject matter thereof; or to confer any jurisdiction upon this Court over respondent, William E. Lamb.

4. The citation is not responsive to the petition.

179 5. The jurisdiction of the Court in cases of contempts is limited by Section 268 of the Judicial Code (R. S. 725; U. S. Code, Title 28, Section 385); and neither the petition nor the cita-

tion allege or show any facts bringing the proceeding herein against said William E. Lamb within any of the provisions of said section.

6. The petition, the citation and the answer show that this Court is without jurisdiction in this proceeding under the provisions of Section 268 of the Judicial Code (R. S. 725; U. S. Code, Title 28, Section 385).

7. The petition and citation are vague, uncertain and indefinite and do not clearly advise said William E. Lamb of any charges brought or relief sought against him.

8. Neither the petition nor the citation show whether the proceeding instituted thereby is civil contempt or criminal contempt.

9. No prayer for punishment, fine or other relief is made in the petition.

10. No prayer for punishment, fine or other relief appropriate to either a civil contempt or a criminal contempt is made in the petition.

11. There is a misjoinder of causes in the petition, in the citation and in the petition and citation.

12. No plenary process was issued herein against or served upon said William E. Lamb and no summary process can give the Court jurisdiction as in a plenary suit.

13. A full and complete settlement having been had between the parties thereto and a final decree having been entered in the case of Sterling B. Cramer vs. Florence T. Holland, et al., in Equity No. 129, the Court is without jurisdiction to proceed under the petition and/or citation.

14. The Court was and is without jurisdiction of the parties and subject matter in the case of Sterling B. Cramer vs. Florence T. Holland, et al., No. 129 in Equity.

15. At the time and place of the service of said citation on said William E. Lamb, he was exempt and privileged from service of said citation.

16. The Court was and is without jurisdiction to grant any equitable relief in this proceeding.

W. C. WELLS,
Attorney for Respondent, William E. Lamb, for the Sole Purpose of This Motion and for No Other Purpose Whatsoever.

Filed July 22, 1930.

DECREE.

(Title Omitted.)

This day came on to be heard at Chambers, in vacation, by consent of all parties hereto, the above styled cause, upon the petition of plaintiffs for the citation of William E. Lamb for contempt, and for an order to turn over money paid to said Lamb by the defendants, and upon the motion to quash the process and dismiss the petition for citation of William E. Lamb for contempt, and for order to turn over money paid Lamb by defendant, and said matters

having been presented to the Court, both in oral argument and in written briefs, and the Court having carefully considered same and being fully advised in the premises, is of the opinion that the rule to show cause should be discharged and the petition dismissed without prejudice to the rights of the plaintiffs or the Receiver, or any interested party, to proceed civilly in the matter as they or any one of them may be advised;

It is now, therefore, considered by the Court, and ordered, adjudged and decreed as follows, to-wit:

That the said motion of the said William E. Lamb to quash the process and dismiss the petition for the citation of William E. Lamb for contempt, and for an order to turn over money paid him by the defendants, be and the same is hereby sustained and the rule to show cause is hereby discharged and the said petition is hereby dismissed without prejudice to the rights of the plaintiffs, the Receiver, or any interested party, to proceed civilly in the matter as they or any of them may be advised; and the said Wil-
182 lian E. Lamb is dismissed hence without day, and all costs of this proceeding to be taxed by the Clerk are taxed upon the plaintiffs herein, judgment for said costs when so taxed is hereby entered against plaintiffs, for which let execution issue as at law.

To all of the foregoing decree the plaintiffs, by their attorneys, excepted in open Court, and their exception was allowed, and having prayed an appeal in open Court to the Circuit Court of Appeals, the same is hereby allowed, and the amount of the bond therefor is hereby fixed at Five Hundred ($500.00) Dol-

lars, and having been executed with The Fidelity & Casualty Company of New York, the same is hereby approved.

Ordered, adjudged and decreed, this the 29th day of July, 1930.

E. R. HOLMES,
District Judge.

Filed Aug. 9, 1930.

---

183 BOND FOR APPEAL.

(Title Omitted.)

Know all men by these presents: That we, Sterling B. Cramer, Canal Bank & Trust Company, Hibernia Bank & Trust Company, Philadelphia National Bank, Continental Illinois Bank & Trust Company, Citizens & Southern Bank, Mississippi Valley Merchants State Trust Company, Bank of America, Bank of Commerce & Trust Company, Chemical National Bank, Hanover National Bank, National Bank of Kentucky, First National Bank of Boston, and Irving Trust Company, and William A. Schmitt, Receiver, principals, and The Fidelity and Casualty Company of New York, as surety, acknowledge ourselves to be jointly indebted to William E. Lamb, appellee in the above cause, in the sum of Five Hundred Dollars ($500.00), conditioned that, whereas, on the 29th day of July, 1930, in the District Court of the United States for the Delta Division of the Northern District of Mississippi, in a suit pending in that Court wherein the principals were plaintiffs and William E. Lamb, defendant, numbered on the equity docket as above, a decree was rendered against the said plaintiffs; and

they having obtained an appeal to the Circuit Court of Appeals and filed a copy thereof in the office of the Clerk of the Court to reverse the said decree and a citation directed to the said defendant citing and admonishing him to be and appear at a session of the
United States Circuit Court of Appeals for
184 the Fifth Circuit to be held in the City of New Orleans, Louisiana, on the.....day of.....; A. D. 1930;

Now, if the said plaintiffs shall prosecute their appeal to effect and shall answer all damages and costs if they fail to make their plea good, the above abligation to be void; otherwise to remain of full force and virtue.

Witness the hands of the parties, this the 30 day of July, 1930.

WILLIAM A. SCHMITT,
Receiver;
STERLING B. CRAMER,
CANAL BANK & TRUST CO.,
PHILADELPHIA NATIONAL BANK,
CONTINENTAL ILL. BANK & TRUST CO.,
CITIZENS & SO. BANK,
MISS. VALLEY MERCHANTS STATE TR. CO.,
CHEMICAL NATIONAL BANK,
HANOVER NATIONAL BANK,
NATIONAL BANK OF KENTUCKY,
FIRST NAT. BANK OF BOSTON,

IRVING TRUST CO.,
HIBERNIA BANK & TRUST CO.,
BANK OF AMERICA,
BANK OF COMMERCE & TRUST CO.,
Principals.

FIDELITY & CASUALTY CO. OF NEW YORK,
(Seal) By MAY L. BLACK,
Surety.

Approved, this the 29th day of July, 1930.
E. R. HOLMES,
District Judge.

Filed Aug. 9, 1930.

---

185 ASSIGNMENT OF ERRORS.

(Title Omitted.)

And now, on this the 30 day of July, 1930, came the plaintiffs, joined in by the Receiver, by their solicitors, and say that the decree entered in the above styled cause on the 29th day of July, 1930, is erroneous and unjust to the plaintiffs, because:

The pleadings filed herein on April 21, 1930, in cause No. 129 alleging the fraudulent transfer pendente lite of approximately $90,000.00 to William E. Lamb, one of the attorneys for the defendant in cause No. 129, and seeking to have the said Lamb pay the said money back into Court, was, and is, an ancillary proceeding in cause No. 129, and was effectual to

make the said William E. Lamb a party to said cause for the purpose stated; and that the citation issued thereon, as of April 21, 1930, which was duly served on the said William E. Lamb with a copy of the petition, was effectual to make the said Lamb a party to cause No. 129, in equity for all purposes.

The answer of the said William E. Lamb to said petition of April 21, 1930, filed May 19, 1930, was and is, and constituted an entry of appearance of the said William E. Lamb in said cause No. 129 as a party thereto, with a waiver of any plea to the jurisdiction of the Court in that cause.

Therefore, it is respectfully urged and as-
186 signed here as error that the Court erred in sustaining the motion to quash the service of process filed herein on the.....day of....., 1930, for the causes set out in said motion to quash.

Respectfully submitted,
GREEN, GREEN & POTTER,
ROBERSON & COOK,
MAYNARD, FITZGERALD & VENABLE,
Solicitors for all Plaintiffs and the Receiver.

Filed July 29th, 1930.
E. R. HOLMES,
Judge.

Filed August 9th, 1930.

187 PRAECIPE TO THE CLERK OF THE DISTRICT COURT AFORESAID TO MAKE UP THE RECORD FOR APPEAL IN THE MATTER OF THE QUASHING OF PROCESS IN RE: WILLIAM E. LAMB IN SAID CAUSE.

(Title Omitted.)

To the District Clerk of the Court Aforesaid:

You are hereby requested to make up the record in the above styled cause and matters on appeal and to include within the record the following:

(a) Original Bill.

(b) Supplemental Bill.

(c) Order on Intervention of the Canal Bank and Trust Company.

(d) Interventions of the Canal Bank & Trust Company.

(e) Order on Intervention of the thirteen creditor banks, First National Bank of Boston, et al.

(f) Intervention of the thirteen creditor banks.

(g) Supplemental Petition of the plaintiffs as against William E. Lamb, Bank of Grenada and others.

188 (h) Answer of William E. Lamb.

(i) Motion to quash service by William E. Lamb.

(j) Decree.

(k) Appeal Bond.

(l) Assignment of Errors.

Yours truly,
MAYNARD, FITZGERALD
& VENABLE.

We, Maynard, FitzGerald & Venable, hereby certify that we have this day forwarded to Messrs. Wells, Jones, Wells & Lipscomb, attorneys for William E. Lamb, a full, true and correct copy of the above praecipe, with the request that they, as attorneys for the said William E. Lamb, file with the Clerk any additional request for parts of the record which they desire to be included in the record when made up for appeal.

Witness our hands, this the 1 day of August, 1930.
GERALD FITZGERALD,
MAYNARD, FITZGERALD
& VENABLE.

Filed August 15th, 1930.

---

189 ADDITIONAL PRAECIPE TO THE CLERK OF THE DISTRICT COURT AFORESAID TO MAKE UP THE RECORD FOR APPEAL IN THE MATTER OF THE QUASHING OF PROCESS IN RE: WILLIAM E. LAMB, IN SAID CAUSE.

(Title Omitted.)

To the District Clerk of the Court Aforesaid:

In making up the record on appeal in the above

styled cause, please add the following which was omitted in the original praecipe handed to you, to-wit:

(1) Final Decree in Cause Number 129, of date April 30, 1930.

(2) Order dated April 30, 1930, continuing the claim against William E. Lamb, and setting the same for trial at Biloxi, May 9th.

Yours truly,
MAYNARD, FITZGERALD & VENABLE.

We, Maynard, FitzGerald & Venable, hereby certify that we have this day forwarded to Messrs. Wells, Jones, Wells & Lipscomb, attorneys for William E. Lamb, a full, true and correct copy of the above additional praecipe with the request that they, as attorneys for the said William E. Lamb, file with
190 the Clerk any additional request for parts of the record which they desire to be included in the record when made up for appeal.

Witness our hands this the 16th day of August, 1930.

GERALD FITZGERALD.

Filed August 16, 1930.

---

191 ADDITIONAL PRAECIPE TO THE CLERK OF THE DISTRICT COURT AFORESAID TO MAKE UP THE RECORD FOR APPEAL IN THE MATTER OF THE QUASHING OF PROCESS IN RE: WILLIAM E. LAMB, IN SAID CAUSE.

(Title Omitted.)

To the District Clerk of the Court Aforesaid:

Through error or oversight in presenting you former

praecipes we omitted two matters of record, which you will please add to the record which you are making up for the Circuit Court of Appeals, to-wit:

(1) Order of temporary injunction entered into by agreement April 22, 1930, as shown by Equity Journal No. 1, page 344.

(2) Citation issued to William E. Lamb, et al., April 21, together with return of the Marshal.

Yours truly,

MAYNARD, FITZGERALD & VENABLE.

We, Maynard, FitzGerald & Venable, hereby certify that we have this day forwarded to Wells, Jones, Wells & Lipscomb a correct copy of the foregoing additional praecipe, with the request that they add any additional parts of the record which they may desire to their praecipe.

This the 28th day of August, 1930.

GERALD FITZGERALD.

Filed August 28th, 1930.

---

192 I, B. B. LOWREY, Clerk of the United States District Court for the Northern District of Missisippi, do hereby certify that the foregoing one hundred and ninety-two (192) pages contain true and correct copies of all of the documents, orders and proceedings in the cause of Sterling B. Cramer, et al., vs. Florence T. Holland, et al., as fully as the same now appear of record with reference to William E. Lamb, and in the files of my office, except such

orders as have been revoked and annulled by subsequent orders and not essential to the record in said cause.

Given under my hand and seal of this Court at Clarksdale, Mississippi, this the 28th day of August, 1930.

B. G. LOWREY,
Clerk, United States District Court, for Northern District of Mississippi,
By CELIA COOK DAVIS,
Deputy Clerk.

(Seal)

---

193 SUPPLEMENTAL TRANSCRIPT.

Filed October 20, 1930.

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

No. 6004.

STERLING B. CRAMER, ET AL.,
Appellants,

versus

WILLIAM E. LAMB,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

---

195 (Title Omitted.)

Now comes William E. Lamb, by his attorney, and moves the Court to enlarge to thirty days the time

within which praecipe may be filed on behalf of appellee for additional portions of the record to be incorporated in the transcript in the matter of appeal by plaintiff and interveners in the above entitled cause; and in support of said motion shows:

The record in the above entitled cause is a voluminous one containing a large number of pleadings, and counsel for said William E. Lamb is not familiar with said record and is, therefore, unable within the time allowed by Equity Rule 75, to determine and designate what additional portions of the record, if any, should be included in the transcript aforesaid.

Said William E. Lamb, at the time of the filing of praecipe by the plaintiff, was away from his office, necessarily absent on business, and has not been able to return in time to prepare praecipe on behalf of appellee.

196 Before such praecipe can be prepared, it will further be necessary to obtain from the files of the Clerk of the District Court of the United States at Clarksdale, Mississippi, a complete list of the pleadings filed in the above entitled cause, such a list not being now available to said William E. Lamb or to his counsel and such list is necessary to the preparation of praecipe on behalf of appellee as aforesaid.

W. CALVIN WELLS,
Attorney for said William E. Lamb.

Filed Sept. 2, 1930.

---

197 ORDER.

(Title Omitted.)

This cause came on to be heard this day upon the motion of William E. Lamb, by his attorneys, for an

extension of time of thirty days within which praecipe may be filed on behalf of the said William E. Lamb for additional portions of the record to be incorporated in the transcript in the appeal of the above cause and the Court having considered the motion is of the opinion that the same should be sustained.

It is, therefore, ordered, adjudged and decreed that William E. Lamb, defendant in the above cause, be and he is hereby allowed thirty days additional time from this date in which to file his praecipe in said cause for such portions of the record as he desires incorporated in the transcript of the appeal of said cause.

Ordered, adjudged and decreed, this 2nd day of September, 1930.

E. R. HOLMES,
District Judge.

Filed Sept. 4, 1930.

Order Book 2, Page 240.

---

198 PRAECIPE OF APPELLEE FOR ADDITIONAL PORTIONS OF THE RECORD TO BE INCORPORATED INTO THE TRANSCRIPT ON THE APPEAL FILED ON BEHALF OF PLAINTIFF AND INTERVENERS.

(Title Omitted.)

To the Clerk of the District Court of the Uuited States for the Northern District of Mississippi, Delta Division:

You will please incorporate into the transcript of record on the appeal filed in the above entitled cause

on behalf of plaintiff, the following portions of the record in addition to those designated in the praecipe and supplemental praecipes heretofore filed by Messrs. Maynard, Fitzgerald and Venable:

(1) Motion to dismiss bill of complaint, filed 7/14/28.

(2) Objections and exceptions of defendant to motion of plaintiff to file supplemental bill.

(3) Petition of intervention of U. S., filed 1/8/29.

(4) Order allowing U. S. A. to intervene, filed 1/8/29.

199 (5) Opinion of Court denying motions to dismiss, filed 1/8/29.

(6) Order overruling motions to dismiss and allowing exceptions, filed 1/12/29.

(7) Order allowing filing of supplemental bill and exception granted, filed 1/12/29.

(8) Application for receiver and notice, filed 1/17/29.

(9) Motion to withdraw motion for receiver, filed 1/21/29.

(10) Answer of Mrs. Florence T. Holland, filed 1/22/29.

(11) Motion to dismiss petition of intervention of U. S., filed 1/22/29.

(12) Motion to dismiss petition of intervention of Canal Bank, filed 10/1/29.

(13) Motion to strike came, filed 10/1/29.

(14) Motion to make more specific same, filed 10/1/29.

(15) Amended and substituted answer of F. T. Holland, filed 12/16/29.

(16) Answer of defendant, Florence T. Holland, to Petition of Intervention of the thirteen creditor banks.

(17) Answer of defendant, Florence T. Holland, to Petition of Intervention of Canal Bank & Trust Company.

(18) Order for issuance of citations for contempt and to show cause.

(19) Praecipe on appeal, filed August 15, 1930.

(20) Additional praecipe, filed August 16, 1930.

(21) Additional praecipe, filed August 28, 1930.

200 (22) Order enlarging time for filing of praecipe on behalf of appellee.

(23) This praecipe.

Respectfully,

WELLS, JONES, WELLS & LIPSCOMB,

Attorneys for William E. Lamb, Appearing Specially as Set Forth in Appearance Herein.

Filed Sept. 13, 1930.

201 OBJECTIONS OF STERLING B. CRAMER, PLAINTIFF, TO CERTAIN OF THE ADDITIONAL PORTIONS OF RECORD ASKED TO BE INCLUDED BY THE DEFENDANT, WILLIAM E. LAMB, IN THE TRANSCRIPT OF APPEAL TO THE CIRCUIT COURT OF APPEALS.

(Title Omitted.)

To the Clerk of the District Court of the United States for the Northern District of Mississippi, Delta Division:

And now comes Sterling B. Cramer, appellant in the above styled cause and objects to the incorporation into the transcript of the record on the appeal filed in the above styled cause, to the inclusion in said record of the following portions asked to be included therein by the appellee and defendant, Lamb, by his praecipe filed with the Clerk aforesaid, on the 15th day of August, 1930, as follows:

A. The appellant objects to the inclusion in the record on appeal to:

1. Motion to dismiss bill of complaint, filed 7/14/28.

202 2. Objections and exceptions of defendant to motion of plaintiff to file supplemental bill.

3. Petition of intervention of U. S., filed 1/8/29.

4. Order allowing U. S. A. to intervene, filed 1/8/29.

5. Opinion of Court denying motions to dismiss, filed 1/8/29.

6. Order overruling motions to dismiss and allowing exceptions, filed 1/12/29.

7. Order allowing filing of supplemental bill and exception granted, filed 1/12/29.

8. Application for receiver and notice, filed 1/17/29.

9. Motion to withdraw motion for receiver, filed 1/21/29.

10. Answer of Mrs. Florence T. Holland, filed 1/22/29.

11. Motion to dismiss petition of intervention of U. S., filed 1/22/29.

12. Motion to dismiss petition of intervention of Canal Bank, filed 10/1/29.

13. Motion to strike same, filed 10/1/29.

14. Motion to make more specific same, filed 10/1/29.

15. Amended and substituted answer of F. T. Holland, filed 12/16/29.

16. Answer of defendant, Florence T. Holland, to Petition of Intervention of the thirteen creditor banks.

203 17. Answer of defendant, Florence T. Holland, to Petition of Intervention of Canal Bank & Trust Company. And for causes assigns the following reasons:

None of the above mentioned parts of the record in the lower Court have any bearing, or can have any bearing whatever upon the motion in this cause to quash the service on the defendant Lamb, and are not properly parts of the record on appeal.

The sole question on appeal as presented to the Circuit Court of Appeals, and as presented to the Honorable E. R. Holmes, Judge of the lower Court, was and is:

"Was William E. Lamb at the time of the service of the writ upon him in this cause, a non-resident attorney attending Court in a foreign jurisdiction, and hence not subject to the service of subpoena, or other writ in the District Court of the United States for the Delta Division of the Northern District of the State of Mississippi?"

The above numbered parts of the record asked to be included by the defendant and appellee Lamb, can have no bearing upon this question. If the defendant and appellee, Lamb, contends that the Court committed any error in the trial of the original case on the merits, then he, Lamb, should plead or demur on the merits, and such questions cannot arise upon the motion to quash the service.

The inclusion of the above parts of the re-
204 cord would have a tendency to confuse the Court, and could have no bearing upon the issue presented.

The inclusion of the above numbered parts of the record in the lower Court as a part of the appeal in this cause would be extra and useless, and constituting a vexatious imposition of expense, as the same have no bearing upon the issues presented.

It is therefore respectfully requested that this question of including in the record the above numbered

portions be referred to His Honor, Judge E. R. Holmes, for his decision as to whether or not such portions of the record are pertinent to the issue and should be included in the record, and in order that he make such provisions as to cost and expense of including same as he may deem proper.

For this purpose the Clerk is respectfully requested to refer to His Honor, Judge E. R. Holmes, the original portions of the record above referred to, together with the praecipe of the defendant, William E. Lamb, and these objections thereto so that the same may be heard by His Honor on the 27th day of September, 1930, or as soon thereafter as he can take the matter up.

Respectfully submitted,
MAYNARD, FITZGERALD
& VENABLE,
Attorneys for Appellant.

To Wells, Jones, Wells & Lipscomb, Attorneys for William E. Lamb:

Notice is hereby given you that the above
205 objections, together with the parts of the record mentioned, will be referred to and taken up before Judge E. R. Holmes on Saturday, September 27, 1930, at Yazoo City, Mississippi, in Chambers, or as soon thereafter as the said Judge may indicate.

Respectfully,
MAYNARD, FITZGERALD
& VENABLE,
Attorneys for Appellant.

We, Maynard, Fitzgerald & Venable, hereby testify that we have this day forwarded to Messrs. Wells,

Jones, Wells & Lipscomb, by prepaid mail a true and correct copy of the foregoing objections, etc., addressing same to their office at Jackson, Mississippi.

Witness our hands this 15th day of September, 1930.

MAYNARD, FITZGERALD & VENABLE.

Filed Sept. 15, 1930.

---

206 (Title Omitted.)

This cause coming on this day to be heard on the motion of the plaintiffs-appellants, resisting the inclusion in the record of certain parts thereof requested to be included in the record by the appellee in his praecipe for preparation of the record filed with the Clerk September 13, 1930, and the Court, being advised in the premises, doth adjudge and decree that the following portions of the record requested in said praecipe of the appellee need not be included in the record, to-wit:

(1) Motion to dismiss bill of complaint, filed 7/14/28.

(2) Objections and exceptions of defendant to motion of plaintiff to file supplemental bill.

(3) Petition of intervention of U. S., filed 1/8/29.

(4) Order allowing U. S. A. to intervene, filed 1/8/29.

(5) Opinion of Court denying motions to dismiss, filed 1/8/29.

(6) Order overruling motions to dismiss and allowing exceptions, filed 1/12/29.

(7) Order allowing filing of supplemental bill and exceptions granted, filed 1/12/29.

(8) Application for receiver and notice, filed 1/17/29.

(9) Motion to withdraw motion for receiver, filed 1/21/29.

207 (10) Answer of Mrs. Florence T. Holland, filed 1/22/29.

(11) Motion to dismiss petition of intervention of U. S., filed 1/22/29.

(12) Motion to dismiss petition of intervention of Canal Bank, filed 10/1/29.

(13) Motion to strike same, filed 10/1/29.

(14) Motion to make more specific same, filed 10/1/29.

(15) Amended and substituted answer of F. T. Holland, filed 12/16/29.

(16) Answer of defendant, Florence T. Holland, to Petition of Intervention of the thirteen creditor banks.

(17) Answer of defendant, Florence T. Holland, to Petition of Intervention of Canal Bank & Trust Company.

It is further ordered that the Appellee may reduce such parts of the record as he deems necessary to narrative form, and the Court will, if proper, approve the same and include it in the record, or the Court will make a finding of fact, if requested by the Appellee.

It is further ordered that the time for the preparation of the record in this cause be, and the same is hereby, closed as of the 15th day of October, 1930.

This order is without prejudice to the Appellee to move, at any time he sees fit, in the Circuit Court of Appeals for Certiorari for diminution of the record, but this Court is of opinion that the record is sufficient to present fairly the issues in the case to the Court of Appeals.

It is further ordered, that the objections of Sterling B. Cramer, Plaintiff, to certain or the additional portions of the record asked to be included by the defendant, William E. Lamb, in the transcript of appeal to the Circuit Court of Appeals heretofore filed in this cause, together with a copy of this order, be made a part of the record on appeal to the Circuit Court of Appeals.

It is further found by the Court that no receiver was ever appointed in this case until the final decree dated April 30, 1930; neither was there any injunction granted against Mrs. Florence T. Holland restraining her from disposing of any property prior to April 21st, 1930, and no payments were made to William E. Lamb after said date, and no order has at any time been issued by the Court which Mr. Lamb has violated. These facts are shown by those portions of the record which the Court has refused to send up in full.

Appellee, William E. Lamb, excepted to the above and foregoing order in open Court, and his exception was allowed.

Ordered and considered this 9th day of October, A. D. 1930.

E. R. HOLMES,
U. S. District Judge.

I, B. G. LOWREY, Clerk of the District Court of United States, for the Northern District of Mississippi, do hereby certify that the foregoing Fifteen (15) Pages contained true and correct copies of the additional orders and proceedings, in the case of Sterling B. Cramer, et al., vs. Florence T. Holland, et al., to be included in transcript of record, filed with Circuit Court of Appeals, from August 29, 1930.

Given under my hand and seal of said Court at Clarksdale, Mississippi, this the 15th day of October, 1930.

B. G. LOWREY,
Clerk,

(Seal)

By CELIA COOK DAVIS,
Deputy Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 6004

STERLING B. CRAMER et al., Appellants,

vs.

FLORENCE T. HOLLAND et al., Appellees

MOTION OF APPELLEE TO DISMISS—Filed December 27, 1930

Comes now appellee by his counsel and moves the court to dismiss this appeal on the ground that this court is without jurisdiction thereof for the following reasons:

(1) the order appealed from is a judgment in favor of the defendant in a criminal contempt proceeding and this court is without jurisdiction to review a judgment in favor of the defendant in such a proceeding, or in the alternative.

(2) if the order appealed from was entered in a civil proceeding this court is without jurisdiction to review said order because it is not a final appealable order.

Respectfully submitted.
W. Calvin Wells, Arvid B. Tanner, Attorneys for Appellee.

In support of the foregoing motion Appellee submits herewith a brief and argument.

IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

[Title omitted]

REPLY OF APPELLANTS TO MOTION OF APPELLEE TO DISMISS—Filed January 9, 1931

The appellee has filed his motion to dismiss the appeal in the above case on substantially two grounds:

I

The Court is without authority to review the judgment of the Court below because the proceeding in the Court

below was a contempt proceeding, and because the contempt proceeding was not maintainable upon the facts alleged in the citation and the petition upon which it was founded.

II

The decree appealed from is not a final decree, and, therefore, not reviewable by this Court.

Most of the brief of counsel for the appellee is devoted to those legal questions arising out of the contempt phase of the proceeding against the appellee in the Court below. It would avail us nothing to enter into a moot debate with counsel as to the propriety of that proceeding inasmuch as there is no error assigned by the appellant upon the action of the Court below in dismissing the contempt charge. We cannot see how counsel voluntarily raises supposed error, and contends so vociferously that the contempt proceeding was not maintainable in the Court below, and if mantainable, the action of the Court in disposing of the same is not reviewable here. We can, therefore, for the purposes of this appeal, agree with counsel that the Court was correct in dismissing the contempt charge. This disposes of the first question above mentioned, and practically disposes of the motion to dismiss the appeal.

On the second proposition, to-wit: that the decree appealed from was not a final decree, we ask the Court to bear in mind that the error asserted here on the part of the Court below was his action in dismissing the civil proceeding wherein the appellee had been made a party by supplemental bill or petition and by order of the Court, thereon, and to which he interposed his answer upon the merits. We also ask the court to bear in mind that the proceeding against the appellee here in the Court below was an ancillary proceeding against him seeking civil relief. In addition thereto, there was issued a citation to show cause as for contempt which was answered by way of adopting the answer of appellee to the supplemental bill. The contempt charge has been dismissed, and the Court need pay no further attention thereto for the reason that no error is assigned on the part of the Court in dismissing the citation.

We quote, for the convenience of the Court, the pertinent parts of the record demonstrating the facts above

stated, first from that pleading whereby the appellee was sought to be made a party to the original suit, and facts alleged charging him with entering into a conspiracy to defraud, and asking appropriate relief because of his said actions (R. 122, 124, 125, 126).

"To the Honorable E. R. Holmes, Judge, etc.:

"And now come the plaintiffs and show to the Court that in the evidence taken on the final trial in the above styled cause it appears that the defendant, Florence T. Holland, and her agent W. P. Holland, have during the pendency of this litigation — and utterly disregarded the rights and privileges of the plaintiffs and the equities in this cause, and the dignity, power and authority of this Honorable Court and in contumacious and contemptuous disregard thereof, have in order to further hinder and delay the creditors of the said W. P. Holland, done the following acts:

• • • • • • •

"4. Plaintiffs allege that Florence T. Holland, the defendant and her said agent, W. P. Holland, conspiring together for the purposes aforesaid, and with the contemptuous disregard etc., aforesaid, together with Messrs. Butler, Lamb, Foster & Pope, their attorneys, and especially William E. Lamb, both said attorneys lastly said having been admitted by this Court as officers of this Court *the* practice before this Honorable Court disregarding the rights of the plaintiffs herein and the power and authority of this Court have transferred, set over and assigned to the said William E. Lamb of the firm of attorneys, aforesaid, a part of the trust fund herein sued for, to-wit: approximately Ninety Thousand Dollars ($90,000.00) of said trust fund. Plaintiffs allege that the said attorneys and all the parties concerned in said transfer actually and constructively knew that the said property and money so transferred was a part of the trust fund herein sued for held by the defendant under the power and direction of this Court to be disposed of only with the equities of all parties in view and by order and consent of this Honorable Court.

"5. Plaintiffs allege that in the scramble to contemptiously and contumaciously get rid of all the property

herein sued for, and upon which the plaintiffs claim lien, all of which was and is in the constructive possession and under the power and authority of this Court, the defendant and her agent, and attorneys have transferred in manner not now known to the plaintiffs, various other monies and property by convenous practices and fraudulent schemes so that now it appears from the statement of the defendant and her agent upon the witness stand that the bulk of the estate herein sued for has been dissipated during the pendency of this litigation and while under the authority of this Court in utter and complete contemptuous and contumacious disregard of this Court of Equity and its power, right and authority."

* * * * * * *

"Therefore, and for the further purpose if the same shall appear necessary of canceling and setting aside the various alleged covenous, fraudulent and nefarious transfers aforesaid, that this Honorable Court, for the purpose of carrying out and effectuating such decrees this Honorable Court may render in the main cause herein, that each all and every of above mentioned parties, and other parties who may appear to be concerned in the said transfers, be made parties to cause, by proper process returnable as required by law, and that upon final hearing hereof your Honor grant to the plaintiffs full and complete general relief herein as to equity may seem meet, but that in the meantime your Honor may issue herein said temporary restraining order as may appear necessary to prevent the further transfer by gift, or otherwise, of the corpus of the estate herein sued for, and that such temporary restraining order be supplemented by writs of injunction to be granted hereinafter, permanently and wholly restrain-i-g and enjoining all persons from further transferring and disposing of the property sued for, and/or involved in this litigation."

Upon the filing of the pleading quoted from above, the Court entered an order whereby the appellee was formally made a party to the suit in the court below (R. 130).

"It is further ordered that a copy hereof be delivered to the Marshal of this Court to be by him personally served

upon each of the above named defendants, and that pursuant thereto that said named parties be made parties to this cause and do herein appear and show cause why that by plaintiffs asked should not be done, and why that the essential to maintain the dignity and authority of this Court be not performed.

"Ordered, adjudged and decreed this April 21st, 1930."

Therefore, it will be observed, upon the filing of the above mentioned pleading and the entry of the above mentioned order, that appellee stood as a party defendant charged with defrauding appellants out of some ninety-odd thousand dollars.

By proper answer to the pleading above mentioned, the appellee filed his answer upon the merits and set up various and sundry affirmative defenses and affirmative theories of defense (R. 147-172).

Such procedure is in strict accord with both the practice and rules of this court. We refer to Rule 34 of the Equity Rules. In the final analysis the proceeding in the court below was, in its nature, the simplest sort of procedure, it appeared, during the trial of the cause, that the appellee had committed acts which the appellant alleged to be fraudulent as to them, and out of which appellants alleged they suffered damages to the extent above stated. Thereupon, a pleading was filed charging such facts, and asking that the appellee be made a party, and an order was entered making him a party, and he answered to the merits. Upon his subsequent motion, the Court finally dismissed the proceeding as against the appellee, discharging him finally, and taxed the appellants with the costs of the proceeding as against the appellee.

We, therefore, arrive at the issue between counsel, it being asserted on the one part, by counsel for appellee, that such a decree is not a final decree, and, therefore, not reviewable here, and on the other part, by counsel for appellants, that such decree is a final decree and is reviewable.

It is said that because the decree preserves the right of the appellants to proceed otherwise as against the appellee, it is not final. We submit that any decree which finally disposes of any given case is a final decree. The identical question has been recently discussed by the Supreme Court and, we submit, finally settled. The Court will recollect

that, under Section 238 of the Judicial Code prior to the amendment of May 13, 1925, a direct appeal lay to the Supreme Court from a district court in any case in which the jurisdiction of the district court was in issue. Such appeal, by a very long line of decisions of the Supreme Court, lay only in cases of final decrees.

In the case of Wilson v. Republic Iron & Steel Company et al., 257 U. S. 92, 66 L. Ed. 144, the identical question was urged upon the Supreme Court, that is that, in as much as the decree did not operate as a bar to a further action, it was not final. We answer the question in the language of the Court:

"Of course, the review can be had only after a final judgment. McLish v. Roff, 141 U. S. 661, 35 L. Ed. 893, 12 Sup. Ct. Rep. 118. But a judgment of dismissal, such as is shown here, is a final judgment. That it leaves the merits undetermined and may not be a bar to another action does not make it interlocutory. It effectually terminates the particular case, prevents the plaintiff from further prosecuting the same, and relieves the defendant from putting in a defense. This gives it the requisite finality for the purposes of a review. Wecker v. National Enameling & Stamping Co., 204 U. S. 176, 181, 182, 51 L. Ed. 430, 434, 435, 27 Sup. Ct. Rep. 184, 9 Ann. Cas. 757; Detroit & M. R. Co. v. Michigan R. Commission, 240 U. S. 564, 570, 60 L. Ed. 802, 807, 36 Sup. Ct. Rep. 424; McAllister v. Chesapeake & O. R. Co. Supra; Colorado Eastern R. Co. v. Union P. R. Co., 36 C. C. A. 263, 94 Fed. 312."

The form of the decree appealed from here is that the process is quashed, the petition dismissed, appellants charged with the costs and the defendant allowed to go without day.

That such a decree is final and appealable has also recently been decided by the Supreme Court in the case of Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U. S. 516, 67 L. Ed. 372. We quote from the opinion of the Court in that case:

"Rosenberg Brothers & Company, Incorporated, a New York corporation, brought this suit in the Supreme Court of that state against Curtis Brown Company, an Oklahoma corporation. The only service of process made was by de-

livery of a summons to defendant's president while he was temporarily in New York. Defendant appeared specially; moved to quash the summons on the ground that the corporation was not found within the state; and, after evidence was taken, but before hearing on the motion, removed the case to the Federal Court for the Western District of New York. There, the motion to quash was granted, upon the ground that the defendant was not amenable to the process of the state court at the time of the service of the summons. A writ of error was sued out under Section 238 of the Judicial Code; and the question of jurisdiction was duly certified. The order entered below, although in form an order to quash the summons, and not a dismissal of the suit, is a final judgment; and the case is properly here. Goldey v. Morning News, 156 U. S. 518, 39 L. ed. 517, 15 Sup. Ct. Rep. 559; Cowley v. Mathieson Alkali Works, 190 U. S. 406, 47 L. Ed. 1113, 23 Sup. Ct. Rep. 728. Compare The Pesaro, 255 U. S. 216, 217, 65 L. Ed. 592, 594, 41 Sup. Ct. Rep. 308."

See also as to what is and what is not a final decree, Empire Trust Company et al. v. Brooks, 232 Fed. 641 (C. C. A. 5).

We stated above that, under Section 238 of the Judicial Code as it stood prior to the amendment of 1925, an appeal lay only from a final decree. This proposition seems first to have been decided by the Supreme Court in 1891, and consistently followed since. See:

McLish v. Roff, 141 U. S. 661, 35 L. Ed. 893.

Chicago, St. Paul, M. & O. R. Co. v. Roberts, 141 U. S. 690. 39 L. Ed. 905.

Bardes v. First National Bank, 175 U. S. 526, 44 L. Ed. 261.

See also cases cited under Note 13, Title 28, Section 345 which is the same as Section 238 of the Judicial Code.

Therefore, when the court entertained jurisdiction in the Republic Iron Company case and the cases there cited, it was of the opinion that a decree which quashed the process, dismissed the suit, and discharged the defendant was a final decree, even though it might not operate as a bar to a further proceeding.

The saving clause in the decree as written added nothing to the rights of the appellants here. The appellants would

have the right of further prosecuting their action against the appellee whether that saving clause were in the decree or not for the very apparent reason that the decree, upon its face, does not undertake to adjudicate the rights of the parties.

In the case of King v. Wooten, 54 Fed. 612 (C. C. A. 5) relied upon by appellee, the Court will observe that, in the first sentence of the opinion of the Court, it was stated that it was admitted by counsel for the appellant that the proceeding there was one solely for contempt. We have heretofore stated, and now reiterate that we are not asking this Court to inquire into the propriety of the action of the Court below in dismissing the citation for contempt, but we are asking this Court to determine whether or not the appellee, having been made a party to the suit in the court below, having been charged with the fraud, and having answered to the merits, was entitled to be dismissed, and whether or not an order dismissing him is a final decree.

Some reliance seems to be placed by counsel upon In re Chiles, 89 U. S. 157, 22 L. Ed. 819, and it is asserted upon the authority of that case that we could not proceed for contempt and for civil relief in the same proceeding. It might well be answered that the proceeding in contempt was founded upon the citation, and it was the citation which the appellee answered. The civil proceeding was based upon the pleading from which we have quoted, and stood at issue upon that pleading, and the defendant's answer to the merits.

In In re Chiles, supra, the only proceeding was one for contempt, and it will be observed that the defendants in that case was punished for the alleged contempt.

It is suggested by the Court that civil relief might also have been had on proper procedure, that is to say, proper notice, process, etc. It might have lain in the mouth of the appellee to assert that the service upon him of the copy of the supplemental bill and of the order making him a party was not in accord with the rules of the Court requiring the issuance and service of the writ of subpœna, but the appellee did not see fit to challenge the mode of process upon him, but exercised the right of answering to the merits and seeking exoneration at the hands of the Court below. This, of course, waived any and all questions as to the kind of process and the mode of its service. See

numerous authorities cited in original brief of appellants.

We, therefore, respectfully submit that the motion to dismiss the appeal should be overruled and remanded to the District Court for hearing upon the merits.

Respectfully submitted.

Green & Green, Maynard, Fitzgerald & Venable, Roberson & Cook, by Sam C. Cook, Attorneys for Appellants.

Certificate

I, Sam C. Cook, one of the attorneys for the appellants in the above styled cause, hereby certify that I have this day mailed, postage prepaid, to Wells, Jones, Wells & Lipscomb, Jackson, Mississippi, a true copy of the foregoing reply brief.

This January 7, 1931.

Sam C. Cook.

Minute entry of argument and submission, January 13, 1931, omitted in printing.

In United States Circuit Court of Appeals for the Fifth Circuit

No. 6004

Sterling B. Cramer et al., Appellants,

vs.

William E. Lamb, Appellee

Appeal from the District Court of the United States for the Northern District of Mississippi

Gerald Fitzgerald, Marcellus Green, Garner W. Green, J. L. Roberson, Sam C. Cook (Maynard, Fitzgerald & Venable on the Brief) for Appellants;

W. Calvin Wells, Arvid B. Tanner (Wells, Jones, Wells & Lipscomb on the Brief) for Appellee.

Before Foster, Circuit Judge, Grubb and Dawkins, District Judges

OPINION OF THE COURT—Filed April 9, 1931

DAWKINS, District Judge:

This cause involved a rule for contempt against William E. Lamb, because of the alleged taking from the jurisdiction of the court of certain funds and for which the ancillary bill was filed in the case of Schmitt, Receiver, vs. Lamb, No. 6072, this day decided. Citation upon the rule was also quashed on the same ground as in that case, that is, because defendant, a resident of the state of Illinois, was present in the jurisdiction of the court as an attorney at law and therefore immune from such process.

Appellants have moved to dismiss the appeal upon the grounds, (1) that this court "is without jurisdiction to review the judgment of the court below because the proceeding * * * was a contempt proceeding and because" it was not maintainable upon the facts alleged; and (2) the decree appealed from was not final.

The petition for the rule alleged that the defendant in suit No. 129 in equity, Mrs. Florence T. Holland, and her husband, W. P. Holland, had conspired with the defendant Lamb and his firm and had "set over and assigned" to him and them $90,000.00 of the trust fund estate involved in that cause, with full knowledge of its purpose to subject the same to the alleged trust and lien of the creditors of W. P. Holland, all in contemptuous disregard of the authority and jurisdiction of the court below. Among other things, the prayer was that the defendant and others therein named be cited to appear before the court "upon a day to be named by the court, there to show cause why they should not be held in contempt of this court." The rule was filed on April 21, 1930, and on the same day the court signed an order to show cause on the following day at 9:00 o'clock A. M., why the defendant therein should not be punished as for contempt. The matter was continued to a later date, and on July 22, 1930, Lamb filed his motion to quash the service. Several grounds, other than his immunity as attorney, were set up, but the court below quashed the service for that reason alone and decreed "that the said

motion of the said William E. Lamb to quash the process and dismiss the petition for the citation of W. E. Lamb for contempt, and for an order to turn over money paid him by the defendant, be and the same is hereby sustained and the rule to show cause is hereby discharged, and the said petition is hereby dismissed, without prejudice to the rights of the plaintiff, the receiver or any interested party, to proceed civilly in the matter as they or any of them may be advised. * * *"

For the reasons stated in cause No. 6072, this day decided, we think the funds were in the constructive possession of the court, to the knowledge of Lamb and his clients, and that plaintiffs were at liberty to proceed either by bill in equity, as was done there, or by rule for contempt, or by both means, to compel their restoration to the custody of the court's officers. We are of the opinion, therefore, that the rule did state a ground for relief and the service under the circumstances was properly made.

The decree below dismissed the rule by quashing the service and hence was undoubtedly final, notwithstanding the reservation of the right "to proceed civilly."

Reversed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 6004

STERLING B. CRAMER et al.,

versus

WILLIAM E. LAMB

JUDGMENT—April 9, 1931

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Mississippi, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, reversed;

It is further ordered, adjudged and decreed that the appellee, William E. Lamb, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

MOTION AND ORDER EXTENDING TIME TO FILE PETITION FOR REHEARING—April 24, 1931

On motion of W. Calvin Wells and Arvid B. Tanner, counsel of record herein, who herein appear as attorneys for and on behalf of the defendant and appellee, William E. Lamb, and on suggesting to the Court that Messrs. Emile Godchaux and R. C. Milling have been associated and employed as additional counsel for the defendant and appellee in this case; and upon further suggesting to the Court that their association has taken place since the handing down of the opinion and decree in this cause on the 9th day of April, 1931; and on further suggesting to the Court that it is the desire and intention of the defendant and appellee, William E. Lamb, to cause to be filed an application for a rehearing in this cause; and upon further suggesting to the Court that the said Emile Godchaux and R. C. Milling will be unable, within the time allowed under the rules of this Court for the preparation and filing of such application for rehearing, to sufficiently familiarize themselves with the record and the issues in this cause to enable them to intelligently assist in the preparation of said application and a brief in support thereof; and upon further suggesting to the Court that W. Calvin Wells, resides in Jackson, Mississippi, Arvid B. Tanner resides in Chicago, Illinois, Emile Godchaux and R. C. Milling reside in the City of New Orleans, Louisiana, and that the defendant, William E. Lamb, resides in the City of Evanston, Illinois, and it is therefore difficult for counsel to conveniently confer concerning the matters and things involved in the preparation of such application for rehearing and said brief; and upon further suggesting to the Court that for the reasons above set forth it is the desire that further time for the

filing of an application for a rehearing herein be allowed and that such time should be extended to the — day of ——, 1931; and it being further suggested to the Court that this request is made prior to the expiration of the time for the filing of an application for a rehearing herein;

Now, therefore, it is ordered that the time within which William E. Lamb may file his application for a rehearing in this cause be and the same is hereby extended to the 1st day of June, 1931.

New Orleans, La., this 24 day of April, 1931.

(Signed) Rufus E. Foster, Judge. (Signed) W. Calvin Wells, Arvid B. Tanner, Emile Godchaux, R. C. Milling.

IN UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT

[Title omitted]

PETITION FOR REHEARING—Filed June 1, 1931

Comes now appellee, William E. Lamb, by his attorneys, and respectfully petitions this Honorable Court to grant a rehearing in this cause. As grounds for his petition, appellee respectfully shows that this Court committed the following errors in reversing the decree of the District Court herein.

I

This Court erred in disposing of this appeal upon an issue not decided by the District Court or presented to this Court, in that

(a) This Court treated the appeal as taken from an order on a motion to quash the service of process whereas no such motion was filed, the motion filed being to quash the process, or rule, itself and dismiss the petition.

(b) This Court held that the District Court quashed the service of process whereas the District Court did not enter any such order, but quashed the process itself, or discharged the rule and dismissed the petition.

(c) This Court held that the District Court's action was based solely on the appellee's claim of immunity from serv-

ice, whereas that claim was not and could not have been the ground for the District Court's action because

(1) A motion to quash service was not made.

(2) No evidence was introduced or tendered to prove facts establishing any immunity from service.

(3) If the District Court had merely quashed the service of the rule for contempt, the result entailed would not have been the discharge of the rule or the dismissal of the petition—both would have been retained.

II

This Court erred in reversing the decree of the District Court when the assignment of error by appellants did not assign any error to the order actually entered by the District Court.

(a) The District Court quashed and discharged the rule to show cause for contempt, and dismissed the petition (R. 175-176); appellants did not assign error to any of these actions (R. 179-180).

(b) Appellants assigned as error that "the Court erred in sustaining the motion to quash the service of process" (R. 180); appellee's motion did not ask that the service of process be quashed (R. 173-175) and the District Court's order did not quash the service of process (R. 175-176).

III

This Court erred in holding that appellants are at liberty to proceed below by rule for contempt

(a) Because no error was assigned to the action of the District Court in terminating the contempt proceeding by quashing and discharging the rule and dismissing the petition (R. 179-180); and, further,

(b) Because the appellants, in briefs filed in this Court, affirmatively acquiesced in and conceded the correctness of the order of the District Court dismissing the contempt proceeding and expressly abandoned its further prosecution (reply brief of appellants to brief of appellee on motion to dismiss appeal, pp. 2 and 9; statements of facts and brief for the appellants, p. 11).

IV

This Court erred in reversing the District Court because the action of the District Court in quashing the process, discharging the rule and dismissing the petition for contempt, was correct.

(a) Considered as a civil contempt, there was no jurisdiction in the District Court to proceed because that court had not entered any order or command of any kind relating to property in the possession or control of Mrs. Holland, and consequently there was no order or command of the District Court violated by appellee and no basis for civil contempt.

(b) Considered as a criminal contempt, the order of the District Court discharging appellee from a charge of criminal contempt was final and not appealable.

Wherefore, the premises considered, appellee prays that this application for rehearing may in due course be considered and a rehearing granted.

Respectfully submitted.

Emile Godchaux, New Orleans, Louisiana; Roberts C. Milling, New Orleans, Louisiana; W. Calvin Wells, Jackson, Mississippi; Arvid B. Tanner, Chicago, Illinois, Attorneys for Appellee. Milling, Godchaux, Saal & Milling, New Orleans, Louisiana; Wells, Jones, Wells & Lipscomb, Jackson, Mississippi, of Counsel.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING REHEARING—July 6, 1931

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 2, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,246. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 432. William E. Lamb, petitioner, vs. Sterling B. Cramer et al. Petition for writ of certiorari and exhibit thereto. Filed October 3, 1931. File No. 36,246.

FILE COPY

OCT 3 19
CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 432

WILLIAM E. LAMB, *Petitioner,*

vs.

STERLING B. CRAMER, ET AL., *Respondents.*

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

(The jurisdiction included)

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

Page

PETITION FOR CERTIORARI.

A. SUMMARY STATEMENT OF THE MATTER INVOLVED 1

B. REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT..... 4

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I. OPINION OF THE COURT BELOW..... 7

II. JURISDICTION 7

III. STATEMENT OF THE CASE 8

IV. SPECIFICATION OF ERRORS 8

V. ARGUMENT 9

1. The Court of Appeals Had no Jurisdiction to Reverse the Judgment Discharging the Rule to Show Cause and Dismissing the Petition for Contempt Because it Was a Judgment for the Defendant in a Criminal Case and no Appeal is Permitted from such Judgments 9

2. Even if the Court of Appeals Might on Some Ground Reverse such a Judgment it could not do so by Treating it as an Order which Merely Quashed Service of the Citation 10

3. Even if the Contempt Proceeding was for Civil and not Criminal Contempt, the Court of Appeals had no Jurisdic-

Page

tion, Because no Appeal was Taken from the Final Decree Entered in the Case 12

Conclusion 12

TABLE OF CASES.

Bessette v. W. B. Conkey Co., 194 U. S. 324 . . 5, 9
Chetwood, In re, 165 U. S. 443 8
Chiles, In re, 89 U. S. 157 11
Christensen Engineering Co., Matter of, 194 U. S. 458 . . . . . 5, 6, 9, 12
Clay v. Waters, 178 Fed. 385 . . . . . 6, 12
Cooke v. United States, 267 U. S. 517 8
Doyle v. London Guarantee Co., 204 U. S. 599 6, 12
Fayerweather v. Ritch, 195 U. S. 276 . . . . . 5, 11
Gompers v. Bucks Stove & Range Co., 221 U. S. 418 . . . . . 5, 6, 9, 12
Hultberg v. Anderson, 214 Fed. 349 . . . . . 6, 12
Midland Bank v. Ins. Co., 277 U. S. 346 . . . . . 5, 11
Slaker v. O'Connor, 278 U. S. 188 11
U. S. v. Bittner, 11 Fed. (2d) 93 . . . . . 5, 10
U. S. v. Sanges, 144 U. S. 310 . . . . . 5, 10
Wingert v. Kieffer, 29 Fed. (2d) 59 . . . . . 5, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. ———.

WILLIAM E. LAMB, *Petitioner,*

vs.

STERLING B. CRAMER, ET AL., *Respondents.*

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

(The jurisdiction included)

May it Please the Court:

The petition of William E. Lamb respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

1. The fundamental question involved in this case is whether a circuit court of appeals has jurisdiction, on any ground, to reverse a judgment of a district

court which in fact discharged a rule to show cause and dismissed a petition for contempt in a criminal contempt case.

2. Assuming that a circuit court of appeals might on some ground reverse such a judgment, the further question is whether it could reverse such a judgment by treating it as an order which merely quashed *service* of the citation.

3. Assuming that the judgment was a judgment in a civil and not a criminal contempt proceeding, the question is whether the court of appeals could reverse such a judgment except upon an appeal from the final decree in the case in which the civil contempt proceeding was pending.

The contempt proceeding was instituted in an equity case pending in the district court on a petition filed therein by the plaintiff in the case and was brought against petitioner who was an attorney for one of the defendants in that case (R., 125). At the time the contempt proceeding was instituted there was no ground for summary civil relief based upon any order of the court because up to that time no order of the district court had been entered or violated and no receiver had been appointed. (R., 196.) After the institution of the contempt proceeding (R., 127), but prior to the entry of the judgment appealed from (R., 177), the principal case in which the contempt proceeding arose was terminated by the entry of a consent decree which provided that it should be without prejudice to petitioner. (R., 146.) No appeal was taken from this consent decree. (R., 177, 179.)

The judgment appealed from was entitled a "decree." It stated that "the Court is of the opinion that the rule to show cause should be *discharged* and the petition *dismissed* without prejudice * * * to any interested party to proceed civilly," and it ordered that "the rule to show cause is hereby *discharged* and the said petition is hereby *dismissed* without prejudice," etc. (R., 176.) No other order or judgment was rendered.

The judgment also stated that it was rendered upon the petition, the citation, and a motion to quash the citation and dismiss the petition. (R., 175.) Since, however, petitioner had previously filed a full answer to the contempt charge (R., 147-167), and his motion to quash the citation and dismiss the petition stated that it was based upon the ground, among others, that the petition, the citation, *and* the *answer*, showed that the district court was without *statutory* jurisdiction under Section 385, Title 28, U. S. Code, to proceed with the contempt proceeding (R., 174), the answer was also before the court when its judgment was rendered.

No error was assigned to the judgment *dismissing* the petition and *discharging* the rule for contempt. The only errors assigned were that the petition and citation were sufficient to institute an ordinary civil proceeding in equity ancillary to the principal case; that petitioner's answer in the contempt proceeding (which, in order to avoid just such claims, was made on special appearance for the sole purpose of answering the contempt charge only) (R., 147) constituted an appearance with a waiver of all objections to the jurisdiction of the district court over him in that ancillary civil proceeding; and (notwithstanding no

order quashing service of any process was ever made) that the district court erred in quashing *service* of the citation as ordinary civil process. (R., 179-180.)

In the court of appeals petitioner moved to dismiss the appeal on the ground that the judgment appealed from discharged a rule to show cause and dismissed a petition for contempt and that if the contempt proceeding was criminal the court of appeals had no jurisdiction of an appeal from a judgment in favor of the defendant, while, if it was civil, the judgment appealed from was an interlocutory order entered in a proceeding in equity previously terminated by the entry of a consent decree, from which consent decree no appeal was or could be taken. (R., 198)

The court of appeals found that the district court had merely quashed service of the citation as a citation *for contempt* on the ground that petitioner, a resident of the State of Illinois, was present in the jurisdiction of the court as an attorney at law and therefore immune from such process. (R., 208-209) It denied the motion to dismiss the appeal, on the ground that an order quashing service of a citation for contempt was final and appealable (R., 209), and reversed the judgment of the district court discharging the rule and dismissing the petition for contempt.

B.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. Under Section 225, Title 28, U. S. Code, the Circuit Court of Appeals had no jurisdiction of the appeal in this case because the judgment appealed from was a judgment for the defendant in a criminal case

and no appeal is permitted from such a judgment, and the decision of the court of appeals that it did have jurisdiction of the appeal is in conflict with the decisions of this Court and with the decisions of the Circuit Court of Appeals for the Second Circuit.

(a) The judgment appealed from was rendered in a criminal contempt case.

Bessette v. W. B. Conkey Co., 194 U. S. 324.
Matter of Christensen Engineering Co., 194 U. S. 458.
Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 441-4, 448.

(b) The court of appeals had no jurisdiction to reverse such a judgment.

U. S. v. Bittner, 11 Fed. (2d) 93, 95.
Wingert v. Kieffer, 29 Fed. (2d) 59.
U. S. v. Sanges, 144 U. S. 310.

2. Even if the court of appeals might on some ground reverse the judgment appealed from, it could not do so by treating it as an order which merely quashed *service* of the citation.

In this respect the decision of the circuit court of appeals is also in conflict with the decisions of this Court.

Fayerweather v. Ritch, 195 U. S. 276, 298-9.
Midland Bank v. Ins. Co., 277 U. S. 346.

3. Even if the judgment was one rendered in a civil and not in a criminal contempt proceeding the circuit court of appeals had no jurisdiction to reverse it because no appeal was taken from the final decree in the case.

Even if the decision of the circuit court of appeals was that it had jurisdiction to review such a judgment of the district court its decision is in conflict with the

decisions of this Court and decisions of the circuit courts of appeals for the seventh and eighth circuits.

Doyle v. London Guarantee Co., 204 U. S. 599.
Matter of Christensen Engineering Co., 194 U. S. 458.
Gompers v. Bucks Stove & Range Co., 221 U. S. 418.
Hultberg v. Anderson, 214 Fed. 349.
Clay v. Waters, 178 Fed. 385.

4. The circuit court of appeals erred in taking jurisdiction of the appeal.

5. The circuit court of appeals erred in reversing the judgment appealed from.

Wherefore, this petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Fifth Circuit commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of the proceedings in the case numbered and entitled on its docket, No. 6004, *S. B. Cramer et al., Plaintiff-Appellant, v. William E. Lamb, Defendant-Appellee,* and that the said judgment of the Circuit Court of Appeals for the Fifth Circuit may be reviewed by this Honorable Court, and that this petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

WILLIAM E. LAMB, *Petitioner,*
By
EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals for the Fifth Circuit was rendered on April 9, 1931, and is reported in 48 Fed. (2d) 537. (R. 207) The decree of the district court which was rendered without other opinion, appears on pages 175-177 of the record herein.

II.

JURISDICTION.

1. The statutory provision believed to sustain jurisdiction of this court is Section 347, Title 28, U. S. Code.

2. The judgment sought to be reviewed became final upon the denial of the petition for rehearing on July 6, 1931. (R., 214.) It was first entered on April 9, 1931. (R., 209.) The time for filing petition for rehearing was extended to June 1, 1931, by an order of the court of appeals, entered April 24, 1931 (R., 210), and the petition for rehearing was filed on June 1, 1931. (R., 211.)

3. The contempt proceeding, in which the judgment sought to be reviewed was rendered, was instituted by petition filed in the case of *S. B. Cramer v. Florence T. Holland, et al.*, No. 129 in Equity, pending in that court. (R., 122-126.) Its object was to have petitioner "held in contempt of court" for taking "trust funds" from the "authority" of the district

court in the *Cramer case.* (R., 125.) Actually the charge was based upon the payment of fees, in the ordinary course of business, to petitioner by his client in the *Cramer case.* (R., 150.) The district court discharged the rule to show cause and dismissed the petition for contempt. (R., 175-177.) The order was appealed to the Circuit Court of Appeals for the Fifth Circuit (R., 176-177), which court found that the district court had merely quashed service of the citation for contempt and reversed the judgment discharging the rule to show cause and dismissing the petition for contempt upon findings that the citation was properly *served* and that the petition stated a ground for relief in a contempt proceeding. (R., 208-209.)

4. Cases believed to sustain the jurisdiction of this court to issue the writ are:

In re Chetwood, 165 U. S. 443, 461-2.
Cook v. U. S., 267 U. S. 517.

III.

STATEMENT OF THE CASE.

A statement of the case has been given under heading "A" in the petition and for the sake of brevity will not be repeated.

IV.

SPECIFICATION OF ERRORS.

The errors intended to be urged are those specified under heading "B" in the petition, and for the sake of brevity will not be repeated.

V.

ARGUMENT.

1. The Court of Appeals Had No Jurisdiction to Reverse the Judgment Discharging the Rule to Show Cause and Dismissing the Petition for Contempt Because it was a Judgment for the Defendant in a Criminal Case and no Appeal is Permitted from Such Judgments.

Petitioner was not a party to the equity case out of which the contempt proceeding arose. No order of any kind had been entered in that case or violated by petitioner when the contempt proceeding was instituted so that there was not at that time any ground for summary civil relief. The alleged contumacious conduct occurred, and the contempt proceeding was instituted, before the final consent decree was entered, but judgment in the contempt proceeding was rendered after the consent decree had been entered and provided that it was without prejudice to the *civil* rights, if any, of the parties concerned. Under such circumstances the contempt proceeding was necessarily a proceeding for criminal contempt.

Matter of Christensen Engineering Co., 194 U. S. 458.
Bessette v. W. B. Conkey Co., 194 U. S. 324.
Gompers v. Bucks Stove & Range Co., 221 U. S. 418.

Since the proceeding was for criminal contempt, the court of appeals had no jurisdiction of an appeal from the judgment because it was a judgment in favor of the defendant in a criminal case.

U. S. v. Bittner, 11 Fed. (2d) 92.
Wingert v. Kieffer et al., 29 Fed. (2d) 59.
U. S. v. Sanges, 144 U. S. 310.

2. Even if the Court of Appeals Might on Some Ground Reverse Such a Judgment it Could Not do so by Treating it as an Order Which Merely Quashed Service of the Citation.

The judgment of the district court is perfectly clear. When that court stated it was of the opinion the rule to show cause should be discharged and the petition dismissed without prejudice to proceed civilly, its judgment discharging the rule to show cause and dismissing the petition did not merely quash *service* of the citation for contempt. There was no dispute between the parties on this point. All were agreed that the district court *dismissed* the contempt proceeding. In their brief in the Court of Appeals in reply to appellee's brief in support of his motion to dismiss the appeal, appellants stated, on page 2:

> "* * * There is no error assigned by appellant upon the action of the court below in *dismissing* the contempt charge * * *. We can therefore for the purpose of this appeal agree with counsel that the court was correct in *dismissing* the contempt charge * * *. The contempt charge has been *dismissed* and the court need pay no further attention thereto for the reason that no error is assigned on the part of the court in *dismissing* the citation." (Italics ours

The foregoing brief is filed under separate cover as an Appendix to this brief.

Under these circumstances the decision of the court

of appeals which found that the district court erred in quashing the service of the citation for contempt and which reversed the judgment discharging the rule to show cause and dismissing the petition for contempt, is arbitrary and void.

Fayerweather v. Ritch, 195 U. S. 276, 298-99.
Midland Bank v. Ins. Co., 277 U. S. 346.

Furthermore, since appellants did not assign any error to the judgment of the district court which discharged the rule to show cause and dismissed the petition for contempt (R. 179-180) but on the contrary expressly admitted in the court of appeals that that judgment was correct, there was nothing for the court of appeals to consider. The errors assigned by appellants could have no application in this case, both because no judgment quashing *service* of any process was ever rendered and because a contempt proceeding, being fundamentally different from an ordinary civil proceeding in equity, could not furnish a basis for an ordinary civil proceeding. *In re Chiles,* 89 U. S. 157. Thus the only issue presented by the assignment of errors was frivolous and the only proper course for the court of appeals would have been to dismiss the appeal.

Slaker v. O'Connor, 278 U. S. 188.

3. Even if the Contempt Proceeding Was For Civil and Not Criminal Contempt, the Court of Appeals Had No Jurisdiction, Because No Appeal Was Taken From the Final Decree Entered in the Case.

A civil contempt proceeding is a dependent part of the civil case in which it arises and can only be reviewed on appeal from the final judgment in the principal case. In this case the principal case was terminated by a consent decree after the contempt proceeding was instituted. That consent decree expressly provided that it should be without prejudice to petitioner, and no appeal was taken from it. The appeal was thus from an interlocutory order entered in a case terminated by a consent decree, and the court of appeals was without jurisdiction to review the order.

Gompers v. Bucks Stove & Range Co., 224 U. S. 418.
Doyle v. London Guarantee Co., 204 U. S. 599.
Matter of Christensen Engineering Co., 194 U. S. 458.
Hultberg v. Anderson, 214 Fed. 349.
Clay v. Waters, 178 Fed. 385.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the conflict between the decisions of this Court and other Courts of Appeal on the one hand and the decision of the Court of Appeals for the Fifth Circuit on the other hand as to the jurisdiction of circuit courts of appeal in a

case of this nature may be removed and in order that the jurisdiction of the Circuit Court of Appeals for the Fifth Circuit may be confined in this case within the limits prescribed by statute, and that to such end a writ of certiorari should be granted and this Court should review and reverse the decision of the Circuit Court of Appeals for the Fifth Circuit.

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

FILE COPY

FILED
OCT 8 1931
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 432.

WILLIAM E. LAMB, *Petitioner,*

vs.

STERLING B. CRAMER, ET AL., *Respondents.*

APPENDIX TO BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

United States Circuit Court of Appeals

FIFTH CIRCUIT

No. 6004

STERLING B. CRAMER, ET AL.,

APPELLANTS,

VS.

WILLIAM E. LAMB,

APPELLEE.

REPLY BRIEF OF APPELLANTS TO BRIEF OF APPELLEE, WILLIAM E. LAMB, ON MOTION TO DISMISS THE APPEAL

GREEN & GREEN,
MAYNARD, FITZGERALD & VENABLE,
ROBERSON & COOK,
Attorneys for Appellants.

U. S. CIRCUIT COURT OF APPEALS
FILED
JAN 9 1931
Cathy J. Lucas

IN THE
United States Circuit Court of Appeals
FIFTH CIRCUIT

No. 6004

STERLING B. CRAMER, ET AL.,

APPELLANTS,

VS.

WILLIAM E. LAMB,

APPELLEE.

REPLY BRIEF OF APPELLANTS TO BRIEF OF APPELLEE, WILLIAM E. LAMB, ON MOTION TO DISMISS THE APPEAL

The appellee has filed his motion to dismiss the appeal in the above case on substantially two grounds:

1.

The Court is without authority to review the judgment of the Court below because the proceeding in the Court below was a contempt proceeding, and because the contempt proceeding was not maintainable upon the facts alleged in the citation and the petition upon which it was founded.

11.

The decree appealed from is not a final decree, and, therefore, not reviewable by this Court.

Most of the brief of counsel for the appellee is devoted to those legal questions arising out of the contempt phase of the proceeding against the appellee in

the Court below. It would avail us nothing to enter into a moot debate with counsel as to the propriety of that proceeding inasmuch as there is no error assigned by the appellant upon the action of the Court below in dismissing the contempt charge. We cannot see how counsel voluntarily raises supposed error, and contends so vociferously that the contempt proceeding was not maintainable in the Court below, and if maintainable, the action of the Court in disposing of the same is not reviewable here. We can, therefore, for the purposes of this appeal, agree with counsel that the Court was correct in dismissing the contempt charge. This disposes of the first question above mentioned, and practically disposes of the motion to dismiss the appeal.

On the second proposition, to-wit: that the decree appealed from was not a final decree, we ask the Court to bear in mind that the error asserted here on the part of the Court below was his action in dismissing the civil proceeding wherein the appellee had been made a party by supplemental bill or petition and by order of the Court, thereon, and to which he interposed his answer upon the merits. We also ask the court to bear in mind that the proceeding against the appellee here in the Court below was an ancillary proceeding against him seeking civil relief. In addition thereto, there was issued a citation to show cause as for contempt which was answered by way of adopting the answer of appellee to the supplemental bill. The contempt charge has been dismissed, and the Court need pay no further attention thereto for the reason that no error is assigned on the part of the Court in dismissing the citation.

We quote, for the convenience of the Court, the pertinent parts of the record demonstrating the facts above stated; first from that pleading whereby the appellee was sought to be made a party to the original suit, and facts alleged charging him with entering into a conspiracy to defraud, and asking appropriate relief because of his said actions. (R 122, 124, 125, 126).

"To the Honorable E. R. Holmes, Judge, etc.:

"And now come the plaintiffs and show to the Court that in the evidence taken on the final trial in the above styled cause it appears that the defendant, Florence T. Holland, and her agent W. P. Holland, have during the pendency of this litigation and utterly disregarded the rights and privileges of the plaintiffs and the equities in this cause, and the dignity, power and authority of this Honorable Court and in contumacious and contemptuous disregard thereof, have in order to further hinder and delay the creditors of the said W. P. Holland, done the following acts:

* * * *

"4. Plaintiffs allege that Florence T. Holland, the defendant and her said agent, W. P. Holland, conspiring together for the purposes aforesaid, and with the contemptuous disregard etc., aforesaid, together with Messrs. Butler, Lamb, Foster & Pope, their attorneys, and especially William E. Lamb, both said attorneys lastly said having been admitted by this Court as officers of this Court the practice before this Honorable Court disregarding the rights of the plaintiffs herein and the power and authority of this Court have transferred, set over and assigned to the said William E. Lamb of the firm of attorneys aforesaid, a part of the trust fund herein sued for, to-wit: approximately Ninety Thousand Dollars ($90,000.00) of said trust fund. Plaintiffs allege that the said attorneys and all the parties concerned in said transfer actually and constructively knew that the said property and money so transferred was a part of the trust fund herein sued for held by the defendant under the power and direction of this Court to be disposed of only with the equities of all parties in view and by order and consent of this Honorable Court.

"5. Plaintiffs allege that in the scramble to contemptiously and contumaciously get rid of all the property herein sued for, and upon which the plaintiffs claim lien, all of which was and is in the constructive possession and under the power and authority of this Court, the defendant and her agent, and attorneys have transferred in manner not now known to the plaintiffs, various other monies and property by convenous practices and fraudulent schemes so that now it appears from the statement of the defendant and her agent upon the witness stand that the bulk of the estate herein sued for has been dissipated during the pendency of this litigation and while under the authority of this Court in utter and complete contemptuous and contumacious disregard of this Court of Equity and its power, right and authority."

* * * *

"Therefore, and for the further purpose if the same shall appear necessary of canceling and setting aside the various alleged covenous, fraudulent and nefarious transfers aforesaid, that this Honorable Court, for the purpose of carrying out and effectuating such decrees this Honorable Court may render in the main cause herein, that each all and every of above mentioned parties, and other parties who may appear to be concerned in the said transfers, be made parties to cause, by proper process returnable as required by law, and that upon final hearing hereof your Honor grant to the plaintiffs full and complete general relief herein as to equity may seem meet, but that in the meantime your Honor may issue herein said temporary restraining order as may appear necessary to prevent the further transfer by gift, or otherwise, of the corpus of the estate herein sued for, and that such temporary restraining order be supplemented by writs of injunction to be granted hereinafter, permanently and wholly restrainig and enjoining all per-

sons from further transferring and disposing of the property sued for, and/or involved in this litigation."

Upon the filing of the pleading quoted from above, the Court entered an order whereby the appellee was formally made a party to the suit in the court below. (R. 130).

"It is further ordered that a copy hereof be delivered to the Marshal of this Court to be by him personally served upon each of the above named defendants, and that pursuant thereto that said named parties be made parties to this cause and do herein appear and show cause why that by plaintiffs asked should not be done, and why that the essential to maintain the dignity and authority of this Court be not performed.

"Ordered, adjudged and decreed this April 21st, 1930."

Therefore, it will be observed, upon the filing of the above mentioned pleading and the entry of the above mentioned order, that appellee stood as a party defendant charged with defrauding appellants out of some ninety-odd thousand dollars.

By proper answer to the pleading above mentioned, the appellee filed his answer upon the merits and set up various and sundry affirmative defenses and affirmative theories of defense. (R. 147-172.)

Such procedure is in strict accord with both the practice and rules of this court. We refer to Rule 34 of the Equity Rules. In the final analysis the proceeding in the court below was, in its nature, the simplest sort of procedure. It appeared, during the trial of the cause, that the appellee had committed acts which the appellant alleged to be fraudulent as to them, and out of which appellants alleged they suffered damages to the extent above stated. Thereupon, a pleading was filed charging

such facts, and asking that the appellee be made a party, and an order was entered making him a party, and he answered to the merits. Upon his subsequent motion, the Court finally dismissed the proceeding as against the appellee, discharging him finally, and taxed the appellants with the costs of the proceeding as against the appellee.

We, therefore, arrive at the issue between counsel, it being asserted on the one part, by counsel for appellee, that such a decree is not a final decree, and, therefore, not reviewable here, and on the other part, by counsel for appellants, that such decree is a final decree and is reviewable.

It is said that because the decree preserves the right of the appellants to proceed otherwise as against the appellee, it is not final. We submit that any decree which finally disposes of any given case is a final decree. The identical question has been recently discussed by the Supreme Court and, we submit, finally settled. The Court will recollect that, under Section 238 of the Judicial Code prior to the amendment of May 13, 1925, a direct appeal lay to the Supreme Court from a district court in any case in which the jurisdiction of the district court was in issue. Such appeal, by a very long line of decisions of the Supreme Court, lay only in cases of final decrees.

In the case of **Wilson v Republic Iron & Steel Company, et al, 257 U. S. 92, 66 L. Ed. 144,** the identical question was urged upon the Supreme Court, that is that, inas much as the decree did not operate as a bar to a further action, it was not final. We answer the question in the language of the Court:

> "Of course, the review can be had only after a final judgment. McLish v. Roff, 141 U. S. 661, 35 L. Ed. 893, 12 Sup. Ct. Rep. 118. But a judgment of dismissal, such as is shown here, is a final judgment That it leaves the merits undetermined and may not be a bar to another action does not make it interloc-

utory. It effectually terminates the particular case, prevents the plaintiff from further prosecuting the same, and relieves the defendant from putting in a defense. This gives it the requisite finality for the purposes of a review. Wecker v. National Enameling & Stamping Co. 204 U. S. 176, 181, 182, 51 L. Ed. 430, 434, 435, 27 Sup. Ct. Rep. 184, 9 Ann. Cas. 757; Detroit & M. R. Co. v. Michigan R. Commission, 240 U. S. 564, 570, 60 L. Ed. 802, 807, 36 Sup. Ct. Rep. 424; McAllister v. Chesapeake & O R. Co. Supra; Colorado Eastern R. Co. v. Union P. R. Co. 36 C. C. A. 263, 94 Fed. 312."

The form of the decree appealed from here is that the process is quashed, the petition dismissed, appellants charged with the costs and the defendant allowed to go without day.

That such a decree is final and appealable has also recently been decided by the Supreme Court in the case of **Rosenberg Bros. & Co. v. Curtis Brown Co.** 260 U. S. 516, 67 L. Ed. 372. We quote from the opinion of the Court in that case:

"Rosenberg Brothers & Company, Incorporated, a New York corporation, brought this suit in the Supreme Court of that state against Curtis Brown Company, an Oklahoma corporation. The only service of process made was by delivery of a summons to defendant's president while he was temporarily in New York. Defendant appeared specially; moved to quash the summons on the ground that the corporation was not found within the state; and, after evidence was taken, but before hearing on the motion, removed the case to the Federal Court for the Western District of New York. There, the motion to quash was granted, upon the ground that the defendant was not amenable to the process of the state court at the time of the service of the summons. A writ of error was sued out under Section 238 of the Judicial Code; and the question of jurisdiction was duly certified. The order entered

below, although in form an order to quash the summons, and not a dismissal of the suit, is a final judgment; and the case is properly here. Goldey v. Morning News, 156 U. S. 518, 39 L. ed. 517, 15 Sup Ct. Rep. 559; Cowley v. Mathieson Alkali Works, 190 U. S. 406, 47 L. Ed. 1113, 23 Sup. Ct. Rep. 728. Compare The Pesaro, 255 U. S. 216, 217, 65 L. Ed. 592, 594, 41 Sup. Ct. Rep. 308."

See also as to what is and what is not a final decree, **Empire Trust Company, et. al. v. Brooks,** 232 Fed. 641 (C. C. A. 5).

We stated above that, under Section 238 of the Judicial Code as it stood prior to the amendment of 1925, an appeal lay only from a final decree. This proposition seems first to have been decided by the Supreme Court in 1891, and consistently followed since. See:

McLish v. Roff, 141 U. S. 661, 35 L. Ed. 893.

Chicago, St. Paul, M. & O. R. Co. v. Roberts, 141 U. S. 690, 39 L. Ed. 905.

Bardes v. First National Bank, 175 U. S. 526, 44 L. Ed. 261.

See also cases cited under Note 13, Title 28, Section 345 which is the same as Section 238 of the Judicial Code.

Therefore, when the court entertained jurisdiction in the Republic Iron Company case and the cases there cited, it was of the opinion that a decree which quashed the process, dismissed the suit, and discharged the defendant was a final decree, even though it might not operate as a bar to a further proceeding.

The saving clause in the decree as written added nothing to the rights of the appellants here. The appellants would have the right of further prosecuting their

action against the appellee whether that saving clause were in the decree or not for the very apparent reason that the decree, upon its face, does not undertake to adjudicate the rights of the parties.

In the case of **King v. Wooten,** 54 Fed. 612 (C. C. A. 5) relied upon by appellee, the Court will observe that, in the first sentence of the opinion of the Court, it was stated that it was admitted by counsel for the appellant that the proceeding there was one solely for contempt. We have heretofore stated, and now reiterate that we are not asking this Court to inquire into the propriety of the action of the Court below in dismissing the citation for contempt, but we are asking this Court to determine whether or not the appellee, having been made a party to the suit in the court below, having been charged with the fraud, and having answered to the merits, was entitled to be dismissed, and whether or not an order dismissing him is a final decree.

Some reliance seems to be placed by counsel upon In re: **Chiles,** 89 U. S. 157, 22 L. Ed. 819, and it is asserted upon the authority of that case that we could not proceed for contempt and for civil relief in the same proceeding. It might well be answered that the proceeding in contempt was founded upon the citation, and it was the citation which the appellee answered. The civil proceeding was based upon the pleading from which we have quoted, and stood at issue upon that pleading, and the defendant's answer to the merits.

In In re: **Chiles, supra,** the only proceeding was one for contempt, and it will be observed that the defendants in that case was punished for the alleged contempt.

It is suggested by the Court that civil relief might also have been had on proper procedure, that is to say, proper notice, process, etc. It might have lain in the mouth of the appellee to assert that the service upon him of the copy of the supplemental bill and of the order making him a party was not in accord with the rules of the Court requiring the issuance and service of the writ

of subpoena, but the appellee did not see fit to challenge the mode of process upon him, but exercised the right of answering to the merits and seeking exonoration at the hands of the Court below. This, of course, waived any and all questions as to the kind of process and the mode of its service. See numerous authorities cited in original brief of appellants.

We, therefore, respectfully submit that the motion to dismiss the appeal should be overruled and remanded to the District Court for hearing upon the merits.

Respectfully submitted,

GREEN & GREEN,
MAYNARD, FITZGERALD & VENABLE,
ROBERSON & COOK,
By SAM C. COOK,
Attorneys for Appellants.

CERTIFICATE

I, SAM C. COOK, one of the attorneys for the appellants in the above styled cause, hereby certify that I have this day mailed, postage prepaid, to Wells, Jones, Wells & Lipscomb, Jackson, Mississippi, a true copy of the foregoing reply brief.

Tnis January 7, 1931.

SAM C. COOK.

FILE COPY

FILED
OCT 23
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 432.

WILLIAM E. LAMB, *Petitioner*,

vs.

STERLING B. CRAMER, ET AL., *Respondents*.

REPLY OF PETITIONER TO RESPONDENTS' STATEMENT OF FACTS, AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

CITATIONS.

	Page
Clay v. Waters, 178 Fed. 385	7
Doyle v. London Guarantee Co., 204 U. S. 599	7
Ex Parte Hudgings, 249 U. S. 378	6
Ex Parte Robinson, 86 U. S. 505	6
Fayerweather v. Ritch, 195 U. S. 276, 298-299	8
Forsyth v. Hammond, 166 U. S. 506	8
Geo. A. Fuller Co. v. Otis Elevator Co., 245 U. S. 489	8
Gompers v. Bucks Stove & Range Co., 221 U. S. 418	6, 7
Hultberg v. Anderson, 214 Fed. 349	7
In re Chiles, 89 U. S. 157	3, 5
Matter of Christensen Engineering Co., 194 U. S. 458	7
Michaelson v. United States, 266 U. S. 42	6
Morris & Co. v. Skandanavia Insurance Co., 279 U. S. 405	7
Savin, Petitioner, 131 U. S. 267	6
Section 347, Title 28, U. S. Code	7
Spiller v. A., T. & S. F. Ry. Co., 253 U. S. 117	8
United States v. Sanges, 144 U. S. 310	7
United States v. Bittner, 11 F. (2d) 59	7
U. S. v. Gulf Refining Co., 262 U. S. 738	8
Wingert v. Kieffer, et al., 29 F. (2d) 59	7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 432.

WILLIAM E. LAMB, *Petitioner,*

vs.

STERLING B. CRAMER, ET AL., *Respondents.*

REPLY OF PETITIONER TO RESPONDENTS' STATEMENT OF FACTS, AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

May it Please the Court:

The sole issues presented by the petition are whether the Court of Appeals had jurisdiction to reverse on any ground the judgment of the district court discharging the rule to show cause and dismissing the petition for contempt and whether, if it had jurisdiction to do so on some ground, it could

do so by treating the judgment of the district court as one which merely quashed service of the citation.

Respondents do not attempt to meet these issues at all. They seek unsuccessfully to avoid them by asserting (p. 5) that they are not involved.

They make no attempt to reconcile the judgment of the court of appeals which reversed a judgment of the district court finally discharging a rule to show cause and dismissing a contempt petition with the fact that, in the Court of Appeals, respondents expressly acquiesced in that final judgment.

The reply makes a number of assertions to show that the issues presented in the petition do not arise on the record. These assertions do not establish the point but, in so far as they involve questions of fact, respondents have gravely misrepresented the record as to matters which, it is submitted are not even ambiguous.

They assert:

(1) the citation and petition for contempt instituted only an ordinary ancillary civil proceeding in equity (p. 6. See also p. 3);

(2) petitioner was a defendant for all purposes in case No. 129, which is the case in which the contempt proceeding was instituted (pp. 3, 5, 6, 9, 10);

(3) petitioner sought immunity from service of the citation on the ground that he was a non-resident attorney attending court in a foreign jurisdiction (pp. 4, 8);

(4) the district court discharged the rule to show cause and dismissed the petition solely for that reason (p. 4);

(5) the decree of the district court in No. 129 was

not a consent decree but was a judgment of the court (p. 10);

(6) the judgment of the court of appeals merely required petitioner to stand trial in the district court in an ordinary civil proceeding (p. 5);

(7) the temporary injunction issued by the district court after the contempt proceeding was instituted was issued on the contempt petition (p. 7).

These assertions directly contradict the record.

(1) The petition and citation for contempt did not institute an ordinary civil proceeding. Both the petition and the citation charged this petitioner with contempt of the district court, and the latter required him to show why he should not be punished. (R. 122, 128, 129, 130.) Moreover such a petition and citation could not as a matter of law institute an ordinary civil proceeding. *In re Chiles*, 89 U. S. 157. Counsel for respondents, who are also counsel for the receiver (respondent in No. 433) do not explain how, after the appointment of the receiver, respondents in this case can maintain an ordinary civil suit which is based upon a cause of action arising before the entry of the consent decree, simultaneously with a similar suit by the subsequently appointed receiver.

(2) Petitioner's answer to the contempt charge was not a general appearance in No. 129. The answer was expressly filed on special appearance directed solely to the contempt proceeding. (R. 147.)

(3) Petitioner never claimed immunity from service of the citation on the ground that he was a non-resident attorney attending court in a foreign jurisdiction. Objection 15, to which respondents refer on p. 4, says nothing whatever about petitioner being a "non-resident." No evidence of non-residence was

introduced and immunity was not sought on that ground.

(4) The judgment of the district court shows that it was not rendered because the court was of the opinion that petitioner was immune from service of the citation for any reason. On the contrary the judgment expressly states that it was rendered because "the court * * * is of the opinion that the rule to show cause should be discharged and the petition dismissed." (R. 176.)

(5) The decree in No. 129 was, in terms, a mere consent decree and not a judgment of the court. (R. 131-146.) Respondents urge this court to take cognizance of the record in the companion case, No. 433, for a better understanding of this case. Should the court do so it will find that the record in No. 433 contains an affidavit of one of the counsel for respondents in this case, in which counsel solemnly swears, not only that the decree in No. 129 was a mere consent decree, but that it represented a voluntary compromise and settlement of that case which was submitted to and approved by the district court solely as a consent decree. (Case No. 433, R. 140-145.)

(6) The judgment of the court of appeals did not merely require petitioner to stand trial in a civil case. It reverses the judgment rendered by the District Court which discharged a rule to show cause and dismissed the contempt petition. The opinion of the court of appeals contains categorical expressions to the effect that the petition and citation for contempt stated a case of contempt and it requires petitioner to stand trial in the district court on a contempt charge. (R. 207-209.)

(7) The temporary injunction was not issued on

the contempt petition. The order expressly states that the injunction was issued on the original bill of complaint. (R. 127.)

Whatever may be respondents' motive in misrepresenting the record, the issues presented by the petition in this case are not affected by such misrepresentations but it is respectfully submitted that they furnish an explanation for similar errors contained in the opinion of the court of appeals.

Respondents also make obviously unfounded assertions of law in their effort to substantiate their misrepresentations of fact and to show that the issues presented by the petition do not arise on this record.

They argue (pp. 6-8) that the proceeding in the district court was not a proceeding for criminal contempt because the petition for contempt also contained a prayer for civil relief. That the proceeding was unquestionably a proceeding for criminal contempt and could not under the circumstances be anything else has been shown on page 9 of the petition. The fact that respondents included in a petition for a citation for criminal contempt a prayer for ordinary civil relief does not in the least change the character of the contempt proceeding. This court has held under identical circumstances that such a misjoinder merely renders the attempt to secure ordinary civil relief in the same proceeding void.

In re Chiles, 89 U. S. 157.

Respondents admit (p. 9) that the proceeding in the district court was a "summary" proceeding, but they do not appear to recognize that there is any distinction between a "summary" proceeding, which is not a proceeding for criminal contempt, and an or-

dinary civil case (p. 6). There is a fundamental distinction. The jurisdiction of the district court to proceed for either civil or criminal contempt is limited by Section 385, Title 28, U. S. Code. In neither case have they any jurisdiction unless it clearly appears that conduct falling under one or more of the provisions of Section 385 is involved.

Gompers v. Bucks Stove & Range Co., 221 U. S. 418.
Ex Parte Robinson, 86 U. S. 505.
Michaelson v. United States, 266 U. S. 42.
Ex Parte Hudgings, 249 U. S. 378.
Savin, Petitioner, 131 U. S. 267.

Respondents also assert (pp. 18-20) that no significance can be attributed to the wording of their assignment of errors which urged that the district court erred in quashing service of a citation for contempt considered as ordinary civil process. Respondents' arguments (pp. 3-6, 8-10) clearly show that the assignment of errors is phrased as it is, not through any mere unfortunate choice of words, but because respondents intended to, and subsequently did, acquiesce in the judgment actually rendered by the district court and sought to have it appear that the district court also rendered a judgment which merely quashed service of the citation for contempt considered as process for instituting an ordinary civil proceeding.

Respondents argue that the questions raised by the petition in this case are not of general importance (pp. 14, 18) and that the writ should not issue because the judgment of the court of appeals is interlocutory. (p. 13-18.)

The questions presented by the petition involve the jurisdiction of courts of appeal and the finality of judgments rendered by district courts in criminal cases. Under the decisions of this Court and the court of appeals for the second circuit, any judgment for the defendant in any criminal case, including contempt proceedings, is final and not appealable.

United States v. Sanges, 144 U. S. 310.
United States v. Bittner, 11 F. (2d) 93.
Wingert v. Kieffer et al., 29 F. (2d) 59.

Similarly judgments in civil contempt proceedings can not be reviewed except on appeal from the final decree entered in the case.

Doyle v. London Guarantee Co., 204 U. S. 599.
Matter of Christensen Engineering Co., 194 U. S. 458.
Gompers v. Bucks Stove & Range Co., 221 U. S. 418.
Hultberg v. Anderson, 214 Fed. 349.
Clay v. Waters, 178 Fed. 385.

Thus, regardless of the nature of the contempt proceeding in which the order of the district court was rendered, the assumption of jurisdiction by the court of appeals was in conflict with the decisions of this Court and other courts of appeal.

The fact that the judgment may be interlocutory does not affect the jurisdiction of this Court to issue the writ. The Court can and has repeatedly done so to review interlocutory orders in proper cases.

Section 347, Title 28, U. S. Code.
Morris & Co. v. Skandanavia Insurance Co., 279 U. S. 405.

Forsyth v. Hammond, 166 U. S. 506.
Spiller v. A. T. & S. F. Ry. Co., 253 U. S. 117.
U. S. v. Gulf Refining Co., 262 U. S. 738.
Geo. A. Fuller Co. v. Otis Elevator Co., 245 U. S. 489.

The present case is one which requires that the writ issue at this time, not only to remove the conflict between the decision of the circuit court of appeals for the fifth circuit and the decisions of this Court and other courts of appeal, but also in order that the court of appeals for the fifth circuit may not, through an exercise of jurisdiction beyond its statutory powers, deprive petitioner of the finality of the judgment of the district court discharging a rule to show cause and dismissing a petition in a criminal contempt proceeding.

It should also issue because the court of appeals has arbitrarily attributed to the district court a judgment which that court never rendered.

See *Fayerweather v. Ritch*, 195 U. S. 276, 298-299.

It is respectfully submitted that respondents' reply does not show that the court of appeals had jurisdiction in this case, or dissolve the conflict on that point between the decision of the court of appeals for the fifth circuit and this Court and other courts of appeal, or show that the issues raised by the petition are not presented by the record. The writ should therefore issue at this time in order that the jurisdiction of the court of appeals may be confined within the limits prescribed for it by statute, that the conflict resulting from its decision may be removed by this

court, and that the finality of judgments for the defendant in criminal cases may be protected.

Respectfully submitted,

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

FILE COPY

DEC 31 193

CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 432.

WILLIAM E. LAMB, *Petitioner,*

vs.

STERLING B. CRAMER, ET AL, *Respondents.*

BRIEF ON BEHALF OF PETITIONER.

EDWARD B. BURLING,
EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

	Page
I. THE OPINION OF THE COURT BELOW	1
II. STATEMENT OF THE CASE	2
III. SPECIFICATION OF ERRORS	8
IV. SUMMARY OF ARGUMENT	9
ARGUMENT	11
A. The Appeal Should Have Been Dismissed for Want of Jurisdiction	11
B. If the Proceeding Be Regarded as an Application to Punish Petitioner for Contempt, the District Court did not Err in Dismissing the Petition and Discharging the Rule	12
C. If the Petition be Regarded as a Supplemental Bill, the District Court did not Err in Dismissing the Petition and Discharging the Rule	17
1. The Contention that the Petition should be Treated as a Supplemental Bill and that it was Erroneously Dismissed is Without Foundation in the Record	19
2. Lamb Was Never Brought into the Proceeding Generally	20
3. Even if the Petition be Regarded as a Supplemental Bill, its Dismissal was not Reversible Error	24
Consequences of Reversing the Decree of the District Court	27

TABLE OF CASES.

	Page
Anderson v. Comptois, 109 Fed. 971	16
Bessette v. W. B. Conkey Co., 194 U. S. 324	11
Bogart v. Electrical Supply Co., 27 Fed. 722	16
Cole v. Ralph, 252 U. S. 286, 290	9
Chiles, In re, 22 Wall. 157, 168	20
Ex Parte Bradley, 7 Wall. 364	16
Ex Parte Buskirk, 72 Fed. 14	13
Ex Parte Davis, 112 Fed. 139	16
Ex Parte Robinson, 19 Wall. 505	16
Fayerweather v. Ritch, 195 U. S. 276, 298-299	9
Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 441-444, 448	11
James v. Downs, 18 Ves. 521	13
Leber v. United States, 170 Fed. 881, 890	16
Matter of Christensen Engineering Co., 194 U. S. 458	11
M'Call Co. v. Bladworth, 290 Fed. 365, 368	16
Midland Bank v. Insurance Co., 277 U. S. 346	9
Panama Railway Co. v. Napier Shipping Company, 166 U. S. 280, 284	9
Schmitt v. Lamb, 48 Fed. (2d) 533	8
Sharon v. Hill, 24 Fed. 726	16
Steam-Stone Cutter Co. v. Windsor Manufacturing Company, 3 Fed. 298	14
Tacoma Auto Freight, Inc., In re, 5 Fed. (2d) 752	21
Toledo Newspaper Company v. United States, 247 U. S. 402, 410	11
United States v. Bittner, 11 Fed. (2d) 59	11
United States v. Day, Fed. Cas. 14934	13
United States v. Ford, 9 Fed. (2d) 990	16
United States v. Sanges, 144 U. S. 310, 323	11
Wingert v. Kieffer, 29 Fed. (2d) 59	11

STATUTES CITED.

Judicial Code, Sec. 268; 36 Stat. 1163, c. 231, Sec. 268; U. S. C. Title 28, Sec. 385 ..... 6, 10, 12, 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 432.

WILLIAM E. LAMB, *Petitioner,*

vs.

STERLING B. CRAMER, ET AL, *Respondents.*

BRIEF ON BEHALF OF PETITIONER.

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals for the Fifth Circuit was rendered April 9, 1931, and is reported in 48 F. (2d) 537. (R. 208-209) The opinion of the District Court is not reported. (R. 175-177)

II.

STATEMENT OF THE CASE.

The writ of certiorari was granted on November 2, 1931, (R. 214) to bring to this Court for review the order of the Circuit Court of Appeals for the Fifth Circuit reversing a decree of the District Court for the Northern District of Mississippi. By this decree the District Court had discharged a rule directed to the Petitioner, William E. Lamb, ordering him to show cause why he should not be punished for contempt because of his acceptance of certain sums, in payment for legal services, from the defendant in a pending creditor's suit. The decree also dismissed the petition upon which the rule to show cause had been issued.

This petition was filed on April 21, 1930, by the respondents, Sterling B. Cramer and others, who were plaintiffs in a suit then pending in the District Court against one Florence T. Holland. (R. 122-127.) The bill of complaint in that action had been filed about two years before, on June 23, 1928 (R. 58) and had alleged that Cramer was a judgment creditor (in the amount of $30,632.29) of W. P. Holland, the husband of Florence T. Holland; (R. 3, 44) that W. P. Holland had conveyed to his wife certain properties worth $2,000,000; and that these transfers had been in fraud of creditors and should be set aside. (R. 27, 32-33) The bill asserted that Mrs. Holland had mingled the property conveyed by her husband with her own property (R. 20) and that therefore her entire estate constituted a trust fund. In August, 1929, another creditor of W. P. Holland holding a judgment for $98,681.97 was permitted to intervene.

(R. 74, 113) On April 17, 1930, shortly before the entry of a final consent decree, banks holding judgments, aggregating over $7,000,000, rendered against W. P. Holland on the preceding day, were allowed to intervene. (R. 118) No receiver was appointed in this suit until its termination by a consent decree on April 30, 1930; nor was any injunction or restraining order, prohibiting the transfer of property by Florence T. Holland, issued until April 22, 1930, the day after the order to show cause why Lamb should not be punished for contempt, was served on him. (R. 196)

Lamb is an attorney, a resident and citizen of Evanston, Illinois. Neither the original creditor's bill brought by Cramer nor any of the intervening petitions had named him as a party. His sole connection with the creditor's suit against Florence T. Holland was as one of the attorneys of record for the defendant.

On April 21, 1930, the Respondents filed a petition in that cause alleging that since the filing of the bill, "a part of the trust fund," about $90,000, had been transferred by Mrs. Holland to her attorney, Lamb. Transfers to other parties, which are not here involved, were also alleged. The petition charged that the funds so transferred had been in the constructive possession of the District Court, and that Lamb was in contempt because he had accepted payment from Mrs. Holland. It prayed that a citation be issued to him to show cause why he should not be punished accordingly. (R. 125-126) There was an additional prayer that:

> "for the further purpose if the same shall appear necessary of cancelling and setting aside

> the various alleged covenous, fraudulent and nefarious transfers aforesaid * * * that each, all and every of above mentioned parties * * * be made parties to cause, by proper process returnable as required by law."

The petition concluded with a prayer for an injunction against further transfers of property by Mrs. Holland. (R. 126)

No subpoena or other regular civil process issued in response to the quoted prayer that the parties named in the petition be made parties to the main cause by "proper process returnable as required by law," but an order (R. 128-130) was made on the day that the petition was filed, requiring Lamb to show cause on the following day, why:

> "they and each of them should not be adjudged to be in contempt of this Court under the allegations as to them made that they and each of them accepted transfers of property in the possession of this Court with the intent to hinder, delay and defraud this Court in the exercise of its jurisdiction with reference to said property and every part thereof.
>
> "And it is further ordered, adjudged and decreed that said parties and each of them further appear at the time and place mentioned, and severally and respectively show cause, if any they have or can, why they should not be adjudged to hold all of said property described subject to the jurisdiction of this Honorable Court to be dealt with by this Honorable Court as fully and completely as if said transfers had never been made, and said property and every part thereof had remained in the possession and under the control of this Honorable Court." (R. 129.)

This order was delivered to the Marshal "to execute and return immediately", and was served on petitioner the same day, April 21, 1930. (R. 131.)

On April 30, 1930, an order was entered continuing the hearing on the citation for contempt until June 9, 1930. (R. 146-147.) On the same day, April 30, a final decree was entered in the main cause. (R. 131-146.) This decree, entered by consent of the parties, adjudged that the debts of W. P. Holland were liens upon the entire estate of the defendant, his wife; appointed a receiver for said property; and ordered Mrs. Holland to convey it to the receiver. The consent decree further provided that no personal judgment should be taken against Mrs. Holland (R. 145) and that the receiver should reconvey to W. H. Powell, one of the attorneys for Mrs. Holland, and obviously for her benefit, her residence with the personal property located therein. (R. 145-146.) The decree concluded with a provision that "William E. Lamb or Butler, Lamb, Foster and Pope [Lamb's law firm] not to be prejudiced hereby." (R. 146.)

About two weeks after the entry of this consent decree, Lamb filed on May 19, 1930, a special appearance for the "sole purpose of answering the citation issued herein * * * and answering the petition upon which said citation was issued, and not otherwise." (R. 147.) His special answer denied all charges of contumacious conduct, and alleged that he had been employed by Mrs. Holland to represent her in certain income tax proceedings in the Bureau of Internal Revenue which he had brought to a successful conclusion (R. 151-153); that thereafter he had been employed to represent her in the creditor's suit brought by the respondent, Cramer, and had performed ex-

tensive services in this connection; that he and the firm of which he was a member had received an aggregate of $60,000 as fees for these legal services (R. 156-157, 159), and $8,220.54 in repayment of cash disbursements (R. 159, 160); and that, in addition, he had received for legal services a note of Florence T. Holland for $12,500 which had not been paid. (R. 159.)

Two months later, on July 22, 1930, Lamb filed a motion (R. 173-175) to quash the citation and dismiss the petition on the grounds that, *inter alia,* neither the petition, the citation, and special appearance, nor the answer to the citation, conferred upon the court any jurisdiction over either him or the subject matter of the petition; that the facts alleged did not constitute any contempt within the provisions of Section 385, Title 28 of the United States Code, which defines the jurisdiction of the lower federal courts in contempt proceedings; and that in any event, the settlement of the main case and the entry of the consent decree in April, 1930, had deprived the court of any jurisdiction it might have had to proceed under the petition and citation. (R. 173-174)

On August 9, 1930, the District Court entered the decree from which the appeal was taken and which is here under review. The material portion of this order is as follows:

> "It is now, therefore, considered by the Court, and ordered, adjudged and decreed as follows, to-wit:
>
> "That the said motion of the said William E. Lamb to quash the process and dismiss the petition for the citation of William E. Lamb for contempt, and for an order to turn over money paid him by the defendants, be and the same is hereby

sustained and the rule to show cause is hereby discharged and the said petition is hereby dismissed without prejudice to the rights of the plaintiffs, the Receiver, or any interested party, to proceed civilly in the matter as they or any of them may be advised; and the said William E. Lamb is dismissed hence without day, and all costs of this proceeding to be taxed by the Clerk are taxed upon the plaintiffs herein, judgment for said costs when so taxed is hereby entered against plaintiffs, for which let execution issue as at law." (Rec. 176)

From this order the Respondents appealed to the Circuit Court of Appeals for the Fifth Circuit. The only error assigned on the appeal was that the court had erred in "sustaining the motion to quash the *service of process* filed herein." No such motion to quash service of the order to show cause had been made in the District Court, but as stated above, that court had merely discharged the rule for contempt and dismissed the petition on which it had been based, without considering the validity of the service of the citation. No error was assigned on the order *dismissing* the petition and *discharging* the rule for contempt.

Petitioner Lamb moved in the Circuit Court of Appeals to dismiss the appeal, but this motion was denied; and, after full argument, the decree of the District Court was reversed. In its opinion, the Circuit Court of Appeals dealt with the case on the theory that the District Court had quashed the service of the order to show cause on the ground that Lamb "was present in the jurisdiction of the court as an attorney at law and therefore immune from such process." (R. 208) It assimilated the present case to a compan-

ion case of *Schmitt v. Lamb,* 48 F. (2d) 533, now pending on *certiorari* in this Court, No. 433, October Term, 1930, in which it had denied such a claimed immunity. (R. 208) As to whether or not an actual contempt was charged in the petition, the Court said:

> "For the reasons stated in cause No. 6072 [the companion case] this day decided, we think the funds were in the constructive possession of the court, to the knowledge of Lamb and his clients, and that plaintiffs were at liberty to proceed either by bill in equity, as was done there, or by rule for contempt, or by both means, to compel their restoration to the custody of the court's officers. We are of the opinion, therefore, *that the rule did state a ground for relief and the service under the circumstances was properly made.*
>
> "The decree below *dismissed the rule by quashing the service and hence was undoubtedly final,* notwithstanding 'the reservation of the right 'to proceed civilly.'" (Italics ours)

The opinion contained no discussion of the only order actually entered by the District Court, namely, the order discharging the rule to show cause and dismissing the petition on which it was founded.

III.

SPECIFICATION OF ERRORS.

1. The Circuit Court of Appeals erred in taking jurisdiction of the appeal.

2. The Circuit Court of Appeals erred in reversing the decree from which the appeal was taken.

IV.

SUMMARY OF ARGUMENT.

There is a preliminary question whether the Circuit Court of Appeals had jurisdiction of the appeal at all. The contempt, if there was any contempt, would seem to have been criminal and not civil, and an order terminating the proceeding in favor of the defendant was therefore not appealable.

But passing that, our main argument will be directed to showing that the action of the District Court in discharging the rule to show cause and in dismissing the petition upon which it was based, was proper. Very little aid in determining this issue can be had from either the decision or opinion of the Circuit Court of Appeals, for, as clearly evidenced by the record, that Court decided the case on an issue not raised by the pleadings, and on the mistaken assumption that the lower court had quashed the *service* of the rule to show cause, rather than discharged the rule itself. Were the present proceeding a law case, this would in itself warrant reversal. *Fayerweather v. Ritch,* 195 U. S. 276, 298-299; *Midland Bank v. Insurance Co.,* 277 U. S. 346. Since the order under review, however, was entered in the course of an equity case and is before this Court on *certiorari,* the entire record may be examined, and a definite disposition of the case made. See *Panama Railway Co. v. Napier Shipping Co.,* 166 U. S. 280, 284; *Cole v. Ralph,* 252 U. S. 286, 290.

That record discloses the following unusual proceeding in the District Court: A petition asking that Lamb be punished for contempt for accepting payment for legal services, and also that he be made a

party to a creditor's suit then pending; an order to show cause why he should not be punished for contempt, which order was served on him by the Marshal; a special appearance and special answer to the contempt charge made by Lamb after the termination of the principal cause; and a motion to dismiss the petition and discharge the rule, which motion was granted by the District Court. We shall endeavor to show in this brief that no matter how this proceeding be regarded, the action of the District Court was not improper. If the petition be regarded as an application to punish Lamb for contempt, either civilly or criminally, and the rule to show cause as a citation therefor, the petition was properly dismissed and the rule to show cause properly discharged because the facts alleged did not constitute a contempt within the meaning of Section 268 of the Judicial Code.

It will be shown that it would be improper to regard the petition as equivalent to a supplemental bill, because it was not so regarded by either of the parties or the District Court at the time. Even if the petition be regarded as a supplemental bill making Lamb a party to the original creditor's suit, the petition was properly dismissed and the rule to show cause properly discharged because the facts alleged did not constitute a cause of action.

ARGUMENT.

A.

The Appeal Should Have Been Dismissed for Want of Jurisdiction.

The district court's order was a judgment for a defendant in a criminal case which the Court of Appeals had no power to review.

In *United States v. Sanges*, 144 U. S. 310, 323, this Court held that the Circuit Court of Appeals had no jurisdiction to review a judgment for a defendant in a criminal case, whether such judgment was entered on a verdict or upon the determination of a point of law by the court. (See also *Toledo Newspaper Co. v. United States*, 247 U. S. 402, 410.) In *United States v. Bittner*, 11 F. (2d) 93, and *Wingert v. Kieffer*, 29 F. (2d) 59, this rule was applied to judgments in favor of the defendant in proceedings for criminal contempt.

If the petition alleged facts constituting a contempt, it charged a criminal contempt rather than civil. It was brought against one not a party to the suit in which the proceeding was instituted and it was not directed to the enforcement of an order in favor of the party instituting it (R. 196). Such proceeding is necessarily one for criminal contempt.

Bessette v. W. B. Conkey Company, 194 U. S. 324.
Matter of Christensen Engineering Company, 194 U. S. 458.
Gompers v. Bucks Stove & Range Company, 221 U. S. 418, 441-444, 448.

The prime purpose of the proceeding was to vindicate the dignity of the court and its power and au-

thority; the petition charged that the payments to Lamb were in "contemptuous and contumacious disregard of this Court of equity and its power, right and authority." (R. 125.)

It is also evident that the District Court regarded the proceeding as one for criminal contempt. The District Court's order dismissing the petition and discharging the rule was made expressly without prejudice to the right of any of the parties or the receiver "to proceed *civilly* in the matter as they or any of them may be advised" (R. 176).

B.

If the Proceeding Be Regarded as an Application to Punish Petitioner for Contempt, the District Court Did Not Err in Dismissing the Petition and Discharging the Rule.

It is Petitioner's position that the facts alleged did not constitute contempt of any sort.

The receipt of payment by Lamb for services rendered was in no way a "disobedience or resistance * * * to any lawful writ, process, order, rule, decree, or command of" the District Court. Judicial Code, Section 268.[1] For no such command, order, rule or

[1] That section reads: "*Administration of oaths; contempts.* The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts." (U. S. C. Title 28, Sec. 385.)

decree had been issued. The payments were made between August 7, 1928, and December 16, 1929. (R. 156, 157) At that time there had been filed merely a bill of complaint alleging that Mrs. Holland had received property in fraud of Mr. Holland's creditors. No order, injunction, or decree, restraining in any manner the right of Mrs. Holland to use her own property for the payment of her lawful debts, had been entered. Under these circumstances it is patent that there could have been no disobedience because there had been no order. *United States v. Day,* Fed. Cas. 14934; *Ex parte, Buskirk,* 72 Fed. 14. Compare *James v. Downs,* 18 Ves. 521, in which Lord Eldon stated the rule:

> "The party can not be committed for the breach of an injunction, that express species of contempt, unless there is an injunction."

In *Ex parte Buskirk, supra,* the Court said:

> "Testing the record of this case in the court below by the rules so established, it will be found that said court had no jurisdiction of the proceeding against Buskirk for contempt. *At the time the same was instituted there had not been issued by the court any writ, process, order, rule, decree, or command in the said chancery cause* of King v. Buskirk and Mullins, *to which the petitioner had or could have shown any disobedience* or resistance whatever, as the record clearly shows. Indeed, the charge as first made seems to recognize this as true, and the affidavit first filed and the order first entered sets up the violation of a 'stipulation' made in open court as the foundation of the proceedings for contempt. However reprehensible such conduct on the part of Buskirk may have been,—proceeding upon the theory that

the charge was true, which he, however, denied in his answer,—it nevertheless did not constitute a contempt to the court or its orders, and did not authorize any proceedings for a contempt under the provisions of the law as it then existed. *A careful examination of the record shows that Buskirk had not been ordered to do or decreed not to do any act or thing in said chancery suit prior to the time he was proceeded against, fined, and committed for contempt.* Such being the case, the court had no jurisdiction of said contempt proceedings, and the rule should not have been granted." (Italics ours.)

Nor can it be said the action of Lamb in accepting payment for legal services rendered, constituted an interference with property in the actual or constructive possession of the Court. No receiver for Mrs. Holland's property had been appointed, even though one had been requested in the original bill; and in no way was such property in the actual or constructive possession of the Court. The mere filing of the bill certainly did not have this effect. See *Steam-Stone Cutter Co. v. Windsor Manufacturing Company,* 3 Fed. 298. No case has been found in which the filing of a bill alone, in a cause of action concerning specific properties, was held sufficient to vest in the Court constructive custody of such property. Accordingly, it is submitted that Lamb's action in accepting the payment for legal services already completed was, in the absence of any order bringing the property within the control of the Court, no more a contempt than would have been the acceptance of payment by Mrs. Holland's grocer for food delivered or by her physician for medical services rendered.

As has been pointed out, no authority has been

cited for any such doctrine, nor do we believe any considered decision could be found to support it. It is the common and usual practice of plaintiffs in creditors' suits to include in a bill to set aside fraudulent transfers of property a prayer for an injunction, and of courts of equity to grant such prayers upon a showing that there is danger that the property may be dissipated or removed from the jurisdiction of the court, and, in the ordinary case, upon the furnishing of an injunction bond. Obviously the reason for granting an injunction in such cases is that the court may be enabled to proceed summarily against intermeddlers by process for contempt. There would be neither occasion, warrant, nor justification for this practice if the mere filing of a creditor's bill and the service of process issued thereon gives the court full jurisdiction so to proceed, nor is it conceivable that courts of equity would tolerate the doctrine that a judgment creditor upon mere allegations that his debtor had fraudulently conveyed property to a defendant could tie up the defendant's entire estate without being required to furnish any bond or security whatever.

Nor can it be said that Lamb's acts in so accepting payment constituted a contempt because, as an attorney, he was an officer of the Court and that therefore his acts were improper. This appears to be the burden of a rather vague allegation in the petition that the alleged contempt had been committed by Lamb "as an officer of this Court." (R. 125) The argument seems to be that merely because Lamb, at the time he accepted payment for previous services rendered, was representing a party in an action in the District Court, the receipt of such payment was in

itself tantamount to a constructive contempt committed in the presence of the Court "or so near thereto as to obstruct the administration of justice." Judicial Code, Section 268; see *Ex Parte Bradley*, 7 Wall. 364, 367; *Ex parte Robinson*, 19 Wall. 505. While it is true that an attorney, as an officer of Court, is subject to summary punishment for misconduct falling within Section 268 of the Judicial Code, such acts must clearly impede the administration of justice or impair the dignity of the Court.[1] Moreover, such contempt would quite clearly be criminal, and a judgment for defendant not appealable. But in the absence of any order or injunction or decree bringing the property of Mrs. Holland within the control of the Court, it is difficult to see how the fact that Lamb was her attorney, made an otherwise proper act a constructive contempt, subjecting him to summary criminal punishment as well as to professional disgrace and disbarment. Compare *M'Call Co. v. Bladworth*, 290 Fed. 365, 368.

Petitioner submits that the dismissal of the petition and discharge of the rule were entirely proper.[2]

---

[1] See *Sharon v. Hill*, 24 Fed. 726 (bearing arms); *Bogart v. Electrical Supply Co.*, 27 Fed. 722 (unnecessary reference); *Anderson v. Comptois*, 109 Fed. 971 (advising blanket disobedience to all returns); *Ex parte Davis*, 112 Fed. 139 (direct disobedience); *Leber vs. United States, ex rel Fleming*, 170 Fed. 881, 890; *United States v. Ford*, 9 Fed. (2d) 990, (falsifying records).

[2] This was expressly admitted in Respondents' reply to motion to dismiss the appeal in the Circuit Court of Appeals, which stated as to this: "There is no error assigned by the appellant upon the action of the Court below in dismissing the contempt charge * * * We can, therefore, for the purposes of this appeal, agree with counsel that the Court was correct in dismissing the contempt charge." (R. 200)

If the payment received by Lamb had been the consideration for real estate or chattels conveyed in good faith to Mrs. Holland, there clearly would not have been any impropriety in his accepting payment, merely because he was her attorney at the time. The receipt of reasonable payment for legal services previously rendered in good faith and for cash disbursements on behalf of a client, is obviously on no different basis. Merely because Lamb happened to be Mrs. Holland's attorney at the time, does not abrogate his right to deal with her, in the absence of any injunction or order bringing her property within the custody of the Court. Under such circumstances, to subject an attorney to summary punishment and probable disgrace and disbarment would have been an unjustified extension of the concept of a contempt, and an abuse of the inherent power of a Court to punish it. The District Court, which throughout regarded the proceeding as one to punish for a contempt, properly dismissed the petition and discharged the rule to show cause.

C.

If the Petition Be Regarded as a Supplemental Bill, the District Court Did Not Err in Dismissing the Petition and Discharging the Rule.

The unusual proceedings had by Respondents in the District Court were at the time regarded by Court and parties alike solely as an application to punish petitioner for an alleged contempt. As has been shown, the District Court believed that it was dealing with a charge of *criminal* contempt.

However, in the Court of Appeals, Respondents' single specification of error was that the Court had

acted erroneously in "sustaining the motion to quash the service of process." (R. 180.) Similarly, Respondents disclaimed in the Circuit Court of Appeals any attempt to interpret the proceedings as an application for criminal contempt (R. 200), and endeavored to show that the petition was in reality a supplemental bill, and that in some fashion Lamb had been brought into the case generally.

Respondents' contention in this respect apparently will be renewed in this Court, for, in their brief in opposition, they argue:

> "That the Circuit Court of Appeals in effect ruled that the ancillary petition and order, service on him of a copy of said order, and his answer and plea of exoneration made petitioner a party to the original case, and gave the district court full jurisdiction and it should not have quashed the citation." (Respondents' Brief in Opposition, p. 5.)

We shall not essay an explanation as to how the proceedings were interpreted by the Circuit Court of Appeals. But it should be noted that nowhere in the opinion of that Court is it remotely indicated that any question relating to plenary jurisdiction over the Petitioner was involved.[4]

---

[4] In objecting to the inclusion of additional portions of the Record in the appeal to the Circuit Court of Appeals, Respondent stated:

"The sole question on appeal as presented to the Circuit Court of Appeals, and as presented to the Honorable E. R. Holmes, Judge of the lower Court, was and is:

"Was William E. Lamb at the time of the service of the writ upon him in this cause, a non-resident attorney attending Court in a foreign jurisdiction, and hence not subject to the service of subpoena, or other writ in the District Court of the United States for the Delta Division of the Northern District of the State of Mississippi?" (R. 192)

In the following section of this brief we shall endeavor to show, first, that the Respondents' belated *ad hoc* contention that the petition to punish for contempt was in effect a supplemental bill and was erroneously dismissed, is unfounded; secondly, that even accepting their contention, that the petition was in effect a supplemental bill, Lamb has not been brought in generally, and finally the petition considered as a supplemental bill failed to state a cause of action and its dismissal could not constitute reversible error.

1. The Contention that the Petition Should Be Treated as a Supplemental Bill and that It Was Erroneously Dismissed is Without Foundation in the Record.

It is apparent that all parties treated the petition as one to punish Lamb for contempt. No one ever regarded it as a bill for general relief. So little was it regarded as a bill for general relief that the Receiver had begun, on April 30, while the contempt proceeding was still pending and undecided, a separate suit against Lamb for all of the relief which it is now claimed was sought in the contempt petition considered as a supplemental bill. That suit is now pending in this Court, No. 433, October Term, 1931, next following the present case. No one at the time of argument in the District Court thought that the petition could be treated as a supplemental bill. In fact, on April 30th only eight days after the filing of the petition, a final consent decree was entered in the main cause, and the so-called supplemental bill was not mentioned in it.

That such was the situation is clearly shown by the record. The petition asked that Lamb be cited for

contempt and that "if necessary" he be made a party "by proper process returnable as required by law." No such process was ever issued or served. A citation to show cause was served requiring petitioner to appear and answer the contempt charge.

If the petition be regarded as embracing both an application to punish for contempt and a supplemental bill for general relief, it was improper to join the two prayers in the one application as was said in *In re Chiles,* 22 Wall. 157, 168:

> "Such a proceeding can constitute no part of process for contempt in disregarding an existing order of the court. The granting or refusal of such an order is governed by very different considerations, and is to be brought to the attention of the court by very different proceedings than such as belong to the one [for contempt] now before us."

It is at least irregular to join in one pleading two dissimilar proceedings, that is, a citation for contempt, and a prayer for general relief. Clearly, Respondents elected to treat the pleading as a citation for contempt, and it was disposed of in the District Court on that basis. They could not thereafter ignore the contempt feature and decide to treat the pleading as a supplemental bill.

2. Lamb Was Never Brought Into the Proceeding Generally.

As we have shown, the proceeding was treated as a summary proceeding to punish Lamb for contempt. Lamb took such measures therein and only such measures as he deemed necessary to purge himself from

contempt. His answer was directed to clearing himself of this charge. To have done less was to run the risk of being committed for contempt. Yet the Respondents seem to think that in some way Lamb by his answer to the contempt charge became a party to the petition generally in its aspect as a supplemental bill.

The petition prayed that Lamb be made a party to the original cause "by proper process returnable as required by law." This meant and could mean only a subpoena issued under the seal of the Court as required by Title 28, Section 721 of the United States Code, and in accordance with Equity Rules 7 and 12. *In re Tacoma Auto Freight, Inc.*, 5 F. (2d) 752. No such subpoena was ever issued. The order to show cause why the petitioner should not be adjudged in contempt and punished therefor, which was the only process issued, did not comply in any respect with the requirements for mesne process and could not properly confer jurisdiction over Lamb as a party generally. This order required him to appear in Court the very next day; it clearly contemplated, and was interpreted by the District Court as demanding, a showing in answer to a charge of contempt.

Nor did Lamb's special appearance amount to a general appearance and answer to the petition, interpreting the latter as a supplemental bill. His answer begins with the specific statement:

> "Now comes William E. Lamb, *appearing in this cause specially* and for the sole purpose of answering the *citation* issued herein and served upon him on or about April 21, 1930, and answering the petition upon which said citation was issued, and not otherwise." (R. 147)

His answer concludes as follows (R. 167):

> "Now, having fully answered both said citation and said petition, said William E. Lamb prays that *he be held to have committed no contempt as in the petition alleged* or as in the citation charged, and that he be fully and completely exonerated from all charges therefor, and fully and completely discharged from said citation, and that the same be discharged as against him; * * *"

Subsequently he filed a motion which recited that he does:

> "appear specially for the purpose of moving the Court to quash the citation aforesaid and to dismiss the petition aforesaid and for no other purpose."

This clearly indicates the absence of any intention upon his part, or the possibility of his statements being reasonably interpreted to mean that he intended, to appear generally and answer to a supplemental bill. That the District Court interpreted the proceeding solely as one for contempt likewise appears from its order which recites:

> "This day came on to be heard at Chambers in vacation by consent of all parties hereto the above styled cause upon the petition of plaintiffs for the citation of *William E. Lamb for contempt.*"

As has already been stated the Court discharged the rule to show cause and dismissed the petition "without prejudice to the rights of the plaintiffs, the re-

ceiver, or any interested party, *to proceed civilly* in the matter as they or any of them may be advised."[5]

It thus appears that there is absolutely no foundation in the record for the belated insistence of Respondents that Lamb's special appearance and answer, were in reality a general appearance on his part.

The Respondents could not by improperly joining a contempt proceeding with a prayer for general relief make Lamb's answer to the contempt citation a general appearance to the prayer for general relief. Lamb did no more than was necessary in answer to the citation for contempt.

Therefore, if the petition for contempt can be regarded as a supplemental bill in equity, it simply stands as a bill filed without any process having been issued or served upon Lamb, and without any pleading of any kind having been filed in response thereto by Lamb. Before Lamb can be required to answer or appear in response to such a supplemental bill, proper process must be served upon him in the manner provided by law. The only process issued or served upon Lamb was the summary citation for contempt and that has been discharged and the contempt proceeding terminated, an action in which Respondents have expressly acquiesced (R. 200). Therefore, before any action can be taken upon the petition as a supple-

---

[5] This interpretation is further confirmed by the statement in the order: "That the said motion of the said William E. Lamb to quash the process and *dismiss the petition* for *the citation of William E. Lamb for contempt* and for an order to turn over money paid him by the defendants, be and the same is hereby sustained and the rule to show cause is hereby discharged and the said petition is hereby dismissed." (R. 176)

mental bill, respondents must bring Lamb into Court by proper service, which up to this time has not been had.

3. Even if the Petition Be Regarded as a Supplemental Bill, Its Dismissal Was Not Reversible Error.

Even if this oddly drawn petition be regarded as the equivalent of a supplemental bill, petitioner submits that the action of the District Court in dismissing the petition should not have been reversed. If the irregular proceeding can be considered as having presented to the lower court a supplemental bill in equity and the court's action can be considered as having dismissed such a bill, without any process having been issued or served thereon or any pleading filed in response thereto, such action is not reversible error, because the so-called supplemental bill failed to state a cause of action against Lamb.

It alleged in the most general terms that Mrs. Holland "transferred, set over, and assigned to the said William E. Lamb of the firm of attorneys aforesaid a part of the trust fund herein sued for to wit; approximately $90,000 of said trust fund." (R. 125) There is a further averment that Lamb knew that the fund so transferred was part of the "trust fund." The creditor's bill described certain specific real estate and certain specific securities as having been transferred by Mr. Holland to Mrs. Holland in fraud of creditors; but the petition against Lamb did not allege that any of this specifically described property was obtained by Lamb from Mrs. Holland. There were additional vague allegations in the creditor's bill to the effect that other property not described had also been so transferred by Mr. Holland

to Mrs. Holland. In general terms it was asserted that property worth $2,000,000 had been transferred by Mr. Holland to Mrs. Holland and that she had mingled it with her own property. But the description of Mrs. Holland's property as a "trust fund" necessarily assumed what in fact had not happened —namely, that at the time Lamb received payment from Mrs. Holland a receiver of her property had been appointed or an order entered bringing such property within the Court. Obviously there was no express trust. Thus the only allegations in the so-called supplemental bill, when it is stripped of its verbiage, are that Mrs. Holland, a defendant in a creditor's suit pending in the District Court, had paid Lamb for legal services. There are no averments as to the circumstances surrounding the transaction and no averments of any matters of fact upon which any charge of fraud could be based. There is no averment of lack of consideration. It was not alleged that at the time of the alleged payment the Court had impounded the fund, had issued an injunction, or had appointed a receiver.

It is manifest that on demurrer these allegations would not have warranted a decree against Lamb. The so-called supplemental bill indicated no more than that in the ordinary course of business Lamb had had dealings with Mrs. Holland and had been paid moneys by her. If these averments constitute a cause of action against Lamb then similar bills could be filed and maintained against every grocer from whom Mrs. Holland had purchased a loaf of bread.

Even if there had been proper allegations of fraud and/or lack of consideration, the petition, treated as

a supplemental bill, failed to set forth a cause of action because it did not specify the particular property transferred.

From the original creditor's bill it appears that the alleged "trust fund", that is, property improperly received by Mrs. Holland, of which it is claimed that Lamb received a part, consisted in a large part of property which was not only not specifically described or identified, but which the bill alleged the complainant was unable to describe or identify. (R. 19-21) The bill also showed that a portion of this supposed "trust fund" was beyond the territorial jurisdiction of the Court. And it alleged that the property which Mrs. Holland received from her husband had been so intermingled with her own property that it could not be segregated therefrom. Since in the petition against Lamb Respondents did not attempt to identify the "trust property" which Lamb had received, the allegations of the petition, taken against the party filing it, must be construed to refer to that part of the alleged trust fund which the bill did not describe or identify. Petitioner submits that even the widest conception of "constructive possession" by a Court cannot be extended to embrace a fund which is neither located nor described in the bill, so that a person receiving it could not determine its identity. Clearly, there could be no equitable levy upon property the location and identity of which are unknown to the Court.

The transfers attacked by the petition were payments of attorneys' fees in the ordinary course of business. The same reasoning which would require Lamb to return sums received in payment of attorneys' fees in regular course of business would apply

equally to a payment to a physician or payments to the keeper of the hotel in which Mrs. Holland lodged while attending Court.

In this connection, it should be noted that the original bill alleged that Mrs. Holland had acquired the entire estate of W. P. Holland valued at $2,000,000 or $3,000,000 and had mingled his property with her own property. The only judgment creditors who were parties to the suit at the time Mrs. Holland made the payments to Lamb were the plaintiff Cramer and one other, and their claims totaled $132,151.05.[6] Under these circumstances, even if the petition be regarded as a supplemental bill and Lamb as having appeared in the case generally, the order of the District Court was not erroneous for the bill could not possibly have supported any decree whatever against Lamb.

Consequences of Reversing the Decree of the District Court.

The consequences of affirming the decree of the Court of Appeals reversing the order of the District Court should be called to the Court's attention. If

[6] The original plaintiff, Cramer, in cause No. 129 was assignee of a judgment for $30,632.78 (R. 3, 44), which at the time the final decree was entered in the creditor's suit, had been reduced to $19,653.63, inclusive of interest to April 30, 1930 (R. 132). After the commencement of this suit a bank intervened on a judgment rendered in the state court in the amount of $98,681.97 (R. 74, 113), which at the time of the final decree in the creditor's suit amounted to $112,497.42, inclusive of interest (R. 132). The sum of the amounts due on these two judgments was $132,151.05: These were the only judgments sued on until the intervention just preceding the entry of the consent decree, which intervention came after all the payments to Lamb had been made.

the cause be reinstated in the District Court, that court could not thereafter proceed to punish Lamb for contempt. For as has been shown, there was clearly no contempt. Nor is it easy to see how the petition could be reinstated as a supplemental bill. The main cause has been disposed of by final decree. And if it is to be reinstated and treated as a supplemental bill, how is Lamb to be brought into Court? He has never appeared generally. He appeared specially to answer the rule for contempt. He has never been served with process. Will the supplemental bill stand until Lamb has been served with process? If Lamb is subsequently served with process and issue is joined, what rule of substantive law is to be applied? Can Lamb be required to return all the money received or is he entitled to retain so much as may be found to be reasonable compensation for his services? One further question: As explained above, the receiver, Schmitt, filed an ancillary suit against Lamb for precisely the same relief as is prayed in this petition treating it as a supplemental bill. Can he prosecute that ancillary suit while Cramer, the original complainant, is prosecuting this so-called supplemental bill against Lamb based upon the same allegations for the same relief at the same time? These difficulties, occasioned but not resolved, by the reversal of the order of the District Court dismissing the petition, may be settled by the affirmance of the District Court's order which, as has been shown, was properly made no matter how the petition be interpreted.

In conclusion, Petitioner submits that the belated endeavor of Respondents to convert a contempt proceeding into a plenary suit should not be sanctioned

by this Court. The procedure has been confused by Respondents' hybrid pleadings, and Petitioner's rights clearly prejudiced. Interpreted by the District Court as a contempt proceeding, the petition was properly dismissed because no contempt was shown. Even if the present attempt to warp the petition into a supplemental bill be countenanced, no cause of action is set forth, and the dismissal should not have been reversed. Finally, the decree of the Circuit Court of Appeals reversing the order of dismissal, no matter on what theory based, was predicated on the existence of an order which is not in the record.

It is respectfully submitted that for the reasons advanced in the foregoing brief, the decree of the Circuit Court of Appeals should be reversed, and the order of the District Court affirmed.

Respectfully submitted,

EDWARD B. BURLING,
EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

FILE COPY

JAN 19 193
CHARLES ELMORE CR

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 432.

WILLIAM E. LAMB, *Petitioner,*

vs.

STERLING B. CRAMER, ET AL, *Respondents.*

REPLY BRIEF ON BEHALF OF PETITIONER.

EDWARD B. BURLING,
EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

	Page
REPLY TO POINT I OF RESPONDENTS' BRIEF	3
REPLY TO RESPONDENTS' POINT II	5
REPLY TO RESPONDENTS' POINT III	8
REPLY TO RESPONDENTS' POINT IV	9
REPLY TO RESPONDENTS' POINT V	9
REPLY TO RESPONDENTS' POINTS VI, VII, AND VIII	12

TABLE OF CASES CITED.

Blake v. McKim, 103 U. S. 336	7
Chiles, In Re, 22 Wall. 157, 168	8
Hyde v. Ruble, 104 U. S. 407	7
Liebing v. Matthews, 216 Fed. 1, 11-12	7
Miller v. Sherry, 69 U. S. 237, 250	14
Peninsular Iron Co. v. Stone, 121 U. S. 631	7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 432.

WILLIAM E. LAMB, *Petitioner,*

vs.

STERLING B. CRAMER, ET AL, *Respondents.*

PETITIONER'S REPLY BRIEF.

Respondents' brief is replete with inaccurate statements concerning the record in the present case. Ultimately the record itself must be examined in order to ascertain precisely what proceedings were had in the District Court, but as an aid to this Court we should like to indicate briefly a number of the more important inaccuracies. Respondents repeatedly assert that the present case originated as a supplemental proceeding in an equity suit. (Respondents' Brief, pp. 2, 3, 4, 8) Inasmuch as this is one of the principal issues on the present review, the bare assertion adds nothing to the argument. This conclusion is repeated in the assertion that the final decree reserved a hearing on the "supple-

mental petition'' (pp. 3, 15, 41). This decree did not refer directly to the petition against Lamb. The Court did reserve jurisdiction of the cause to make such further orders as might be required and which might be found necessary for the creation, preservation, and/or disposition of the relative rights of the several parties to the suit. (R. 134, 138) Similarly, it is stated (pp. 4, 24, 41) that the hearing on the ''supplemental petition'' was set by consent for June 9th. The order setting the hearing referred to it as a hearing on the citation and did not refer to any supplemental bill. (R. 146)

Respondents state (p. 5) that the hearing on the petition and order to show cause was only on the motion to quash. The Court's order (R. 175) recites that the case came on to be heard upon the petition as well as upon the motion to quash. It is likewise asserted that the Circuit Court of Appeals ruled upon the petition as a supplemental bill (p. 7). As we have pointed out in our main brief, the opinion of the Circuit Court of Appeals affords no basis for any such conclusion.

It is stated that the Government intervention was pending throughout the entire creditor's suit until the date of the final decree. (Respondents' brief p. 40) This intervention was dismissed on April 19, 1930, by order of the court on application of the Government, eleven days before the final decree. Therefore since this Government claim was never brought to a successful conclusion, no equitable lien for the amount of the claim ever existed.

Finally, Respondents repeatedly assert that the sole ground for the action of the District Court was its belief that Lamb was immune from service. (Respon-

dents brief pp. 5-6, 35-36, 44) As we have stated in our main brief, this mistaken assumption was first introduced by Respondents in their objections to the inclusion of certain portions of the record. (R. 192) There is not the slightest indication in the proceedings in the lower court which remotely supports this mistaken assumption.

In our original brief we endeavored to simplify the issues raised on a record confused by unconventional and irregular pleadings and by misconceptions entertained by the Court of Appeals as to the issues involved. We showed that the case presents two main questions: *first*, whether the petition was sufficient to charge Lamb with contempt of any sort; and, *second*, whether, if bad in that aspect, the petition can be now supported as a supplemental bill for plenary relief and whether, however viewed, there was any error in dismissing it.

The brief filed by Respondents contains eight subdivisions. While to some extent the real issues are discussed in these subdivisions, the contentions raised in our main brief are not met directly or indirectly. Accordingly, Petitioner believes that he can be of most assistance to the Court by considering in turn each subdivision of the Respondents' brief and replying thereto. In addition, in order that the Court may have a clear picture of the proceedings had in the District Court, we have inserted as an APPENDIX to this Reply Brief a chronology showing the order in which the pleadings were filed and the various decrees entered.

REPLY TO POINT I OF RESPONDENTS' BRIEF.

Respondents urge that they did not attempt to have Lamb punished for criminal contempt, and that there-

fore our point that the order was non-appealable is not well taken. But it is manifest that the petition charged Lamb with contempt of some sort. The petition refers to "contumacious conduct"; the rule to show cause mentions an intent to "defraud this court". As we have shown in our main brief (pp. 12-17), it is obvious that Lamb did not commit a contempt of any sort, either civil or criminal. But on the question of appealability, the essential issue is what kind of contempt was *charged* in the petition. Respondents' theory in the District Court was that Lamb had defied the power, the dignity, and the authority of the court; and had brought it into disrespect by taking property out of its possession just as though he had seized securities in the court-room from the hands of the Judge. The theory was that Lamb's conduct amounted to a criminal contempt and Respondents sought to have him punished on that basis. Upon the actual facts, this was a poor theory, but it *was* the theory upon which the petition was predicated. The District Court found quite properly that there was no contempt of any sort, and discharged the rule and dismissed the petition. It is submitted that on the present record this was plainly a dismissal of a charge of criminal contempt, and therefore the order was not appealable.

As pointed out in our main brief, Respondents in the Circuit Court of Appeals stated that they would "agree with counsel that the Court was correct in dismissing the contempt charge." (R. 200) Respondents now disclaim this admission on the ground that it was merely a statement in "the brief of associate counsel," (p. 14) and that it was included in the record by petitioner. The statement in question, how-

ever, was made not in a brief but as part of the reply to Lamb's motion to dismiss the appeal, and was included in the record not by petitioner but by the Clerk of the court. Moreover, this admission in the court below embraced not only the charge of criminal contempt, if any, but also any possible charge of civil contempt.

As to the latter, it is somewhat difficult to discover whether Respondents have entirely abandoned the suggestion that the petition contemplated a charge of civil contempt. (See Respondents' brief, p. 14) Nowhere in their brief can there be found any exposition of their theory as to how the proceeding could be maintained as a contempt action, either civil or criminal, in view of the prohibitions contained in Section 268 of the Judicial Code. This is fully discussed in our main brief (pp. 12-17), where we have pointed out that the Court of Appeals was clearly in error in holding that Lamb's acts constituted a contempt of any sort.

REPLY TO RESPONDENTS' POINT II.

Although they have practically abandoned their contention that the petition charged a criminal contempt on the part of Lamb, and while it is impossible to discover whether they continue to argue that the petition charged civil contempt, Respondents now assert, in a *post hoc* endeavor to attribute validity to the pleading, that it was in reality a supplemental bill and that the District Court erred in dismissing it. This belated contention is most extraordinary in view of the fact that the only error alleged in the Court of Appeals was that the lower court had quashed the *service,* (R. 180) and in view of the basis

on which the Court of Appeals determined the case, namely, that the quashing of the *service* had been erroneous. (R. 208-209)

It is obvious that Respondents cannot now entirely disregard the allegations concerning contempt which they inserted in the petition and the order to show cause. Their present theory seems to be that they had filed in the lower Court a bifurcated pleading not only charging conduct punishable as contempt, but also containing allegations sufficient for a supplemental bill. We may examine the argument thus advanced, and ascertain whether even on this theory the lower Court erred in dismissing the petition and discharging the rule.

1. The very claim that it was a double-barrelled pleading should make us cautious. The objective in pleadings is definiteness and certainty. That would not be attained by a pleading which at the option of the pleader may be taken to mean two such dissimilar things as a petition for summary action by the Court and a bill in equity for general relief. They are entirely different in their nature and the complainant is required to proceed in a different manner.

2. To permit such uncertain and confusing pleading is unfair to a defendant. He does not know what he is called upon to meet. In this very case the belated argument of Respondents is that by pleading in this hybrid fashion they lured Lamb into a general appearance to a bill in equity for general relief. He *had* to answer the contempt charge, and in doing so, they say he became a party generally because the same petition contained two things. A method of pleading that can be used so unfairly ought not to be encouraged.

3. In fact they chose to treat it as a contempt proceeding. No subpoena was ever issued. But a rule to show cause, appropriate to that course of action, was issued, the case was heard, and the petition dismissed as in a contempt proceeding.

4. Respondents in filing the petition for contempt did not comply with the provisions of Equity Rule 34 relative to notice and application for leave to file a supplemental bill. The petition was filed as a summary proceeding, without notice to Lamb or any other parties therein named, and without application to the Court for leave to file it. In the absence of such notice and leave of Court, a supplemental bill cannot be regularly filed, and a refusal to allow it to stand is not reviewable. *Liebing v. Matthews,* 216 Fed. 1, 11-12.

5. If the petition is a supplemental bill, it is not a good one for the necessary jurisdictional requirements are lacking. Both Cramer and Lamb are citizens of Illinois (R. 1, 151) and thus the necessary complete diversity of citizenship for a plenary suit is lacking. See *Blake v. McKim,* 103 U. S. 336; *Hyde v. Ruble,* 104 U. S. 407; *Peninsular Iron Co. v. Stone,* 121 U. S. 631.

6. Lamb's position is that the record clearly indicates that at no time were the proceedings below regarded by either Court or parties as a supplemental bill. Respondents now insist that this bifurcated pleading should have been considered as a supplemental bill from the outset. It is perhaps indicative of Respondents' own point of view concerning this present contention that several months before the final hearing, and only nine days after the filing of the petition which Respondents now contend was a supplemental bill, they caused the Receiver to file a

separate bill in equity against Lamb for precisely the same relief. The inquiry naturally suggests itself as to why this was necessary if a plenary suit against Lamb had already, albeit rather peculiarly, been instituted.

7. The foregoing considerations demonstrate the unfairness and danger inherent in permitting such bifurcated pleadings to be interpreted at the will of a pleader. They commend the wisdom of the rule laid down by this Court in *In re Chiles*, 22 Wall. 157, 168, where this precise question was raised and the decision made that a prayer for general relief could not be appended to a petition to punish for contempt.

REPLY TO RESPONDENTS' POINT III.

In this section Respondents argue that no appeal was necessary from the final decree in the creditors' suit, and that it was not necessary in the present case to bring up the entire record in that suit. It is also urged that the decree of the District Court dismissing the petition and discharging the rule was a final decree and therefore appealable. We do not urge the point that the entire record in the original creditors' suit should have been brought up in the present appeal; for it is and has always been Lamb's position that the proceedings below were merely an attempt to have Lamb punished for contempt. Moreover, as we shall show later, if this petition can at any stage of the case be considered a supplemental bill, the bill itself was wholly defective and vague, and consequently, its dismissal was not erroneous. Thus the question as to whether or not the entire record in the Holland suit should have been brought up on appeal is immaterial.

REPLY TO RESPONDENTS' POINT IV.

This concerns the assignment of errors. On the appeal from the District Court to the Court of Appeals the only error assigned was error in "sustaining the motion to quash service of process." (R. 180) There was in fact no such order, but the Court of Appeals, misled by the assignment of error, dealt with the case on that basis. (R. 208-209) Respondents now argue that the Court of Appeals was not limited by the assignment of error but had a *right* to consider other questions. We do not deny that they had a right to consider other errors besides the one assigned. What we did say and what we say now is that the record clearly shows they did not, in fact, decide the case on any other basis.

REPLY TO RESPONDENTS' POINT V.

The Respondents contend that Lamb became a party to the cause generally by his voluntary actions which they enumerate:

(1) Allowing restraining order (R. 127) to be entered by consent, said restraining order enjoining defendant Florence T. Holland "either personally, or through her agent or attorneys."

(2) The insertion in the final decree of the reservation "William E. Lamb or Butler Lamb Foster & Pope not to be prejudiced hereby" (R. 146).

(3) Filing his answer to the contempt petition (R. 147-172; and.

(4) Agreeing that the hearing on the citation for contempt be continued to June 9 (R. 146-147).

See Respondents' Brief, pages 7-8 and 15.

We may consider each of these in turn.

1. The restraining order referred to above was entered against Mrs. Holland, the defendant in the creditors' suit. It was the first injunction order entered in that proceeding (R. 196). It was clearly directed solely against the defendant in that proceeding and the phrase "either personally, through her agent or attorneys" cannot possibly be given the meaning which Respondents seek to attach to it, of making all attorneys for Mrs. Holland, including Lamb, parties to the main cause.

2. As to the reservation in the decree there is nothing to show that Lamb appeared in Court on this point. The record is silent. In the companion case No. 433 there is an affidavit of Sam C. Cook, one of the attorneys for Respondents, in which it appears that:

> "Immediately after the rendition of the oral opinion rendered by the Court * * * continuous conferences were had between the attorneys representing opposing interests in said litigation, looking to the settlement of the same, *except that William E. Lamb was not present at any of said conferences* * * * said William E. Lamb was not present at any of said conferences, and so far as affiant had knowledge, he did not participate therein in any way.
>
> * * * *
>
> "When affiant presented the said final decree for the approval of the said Lamb, he was requested by said Lamb to insert in said decree a provision that same should be without prejudice to him or Butler, Lamb, Foster & Pope, stating that the decree, as originally drawn, contained such an exception as to the Planters Manufacturing Company, and further stating that he thought

that we should extend to him the same courtesy. This was agreed to (subject to the approval of his associates) by affiant, and the said provision was inserted in said decree, on the request of the said Lamb, by consent of all attorneys there present representing the plaintiff and interveners."

From the above it is clear that the reservation in the decree was not due to any request made by Lamb to the court, and therefore, it has no bearing upon the question whether Lamb entered a general appearance.

3. The order of continuance referred only to "the citation against Lamb". (R. 146-147.) It does not give the slightest indication that anyone considered that the hearing which was continued was a hearing on a supplemental bill in equity.

4. The special return filed by Lamb to the contempt charge is the principal item relied upon by Respondents to show that Lamb entered a general appearance. Respondents assert that Lamb's answer (R. 147-172) constituted a general appearance and an answer to the petition as a supplemental bill in equity.

The argument in support of Lamb's position on this point is at pages 20-23 of our original brief. Respondents' argument on the point is stated variously at pages 7-8, 15, 24-25, 34-35, 43 and 45 of their brief. The question must be decided by considering the situation in which Lamb was placed by the service upon him of the petition and citation for contempt, charging him with contumacious and contemptuous conduct and summarily ordering him to appear in Court on the following day; and by examining the answer which Lamb filed thereto. Faced with such charges, calling in question his professional

conduct and disparaging his reputation, he thought it essential to make a full and detailed answer to the allegations and to ask exoneration from the contempt charge. That he did and no more. It is evident that Lamb attempted and intended to limit his appearance to an answer to the contempt charges and we submit that the answer was a special appearance and not a general appearance and that it did not constitute an answer to a supplemental bill for general relief, even if the petition can now be so considered.

If this question of the nature and effect of the answer is decided in favor of Lamb's position, that completely disposes of the only contention seriously urged by respondents at this stage of the case. For even if the petition be considered of a dual nature, as a supplemental bill it stands without having been served upon Lamb or answered by him.

Respondents attempted by improperly joining a citation for contempt with a prayer for general relief to put Lamb in this dilemma: If he fully answered the citation for contempt, he would be faced with the claim that he had appeared generally in answer to the prayer for general relief. If, on the other hand, he attempted to avoid the danger of seeming to appear generally, he might answer the contempt charge so inadequately that he would fail to clear himself. Lamb *had* to answer the contempt charge, and it is not suggested how he could have guarded his appearance to that purpose any more completely than he did.

REPLY TO RESPONDENTS' POINTS VI, VII, AND VIII.

At the outset it should be noted once again that Respondents insist that the *service* of citation on

Lamb was quashed. This is not true and we do not contend that the service of the citation should be quashed.

Respondents have cited to the Court a large number of cases to show that under the law of Mississippi, the filing of a judgment creditor's bill creates an equitable lien upon the property of the defendant described in the bill and that all subsequent transferees *pendente lite* take subject to this lien. There is no need for us to discuss in detail these cases, most of which are only remotely in point; for we do not deny any of the propositions of law urged by the Respondents on this point. It is submitted that no matter how broadly or narrowly the rule of equitable liens or constructive possession, or property *in gremio legis,* be interpreted, at least two essential requisites (as set forth below) are lacking in the present petition, treating the latter as a supplemental bill.

The theory on which the Respondents assert Lamb's liability, is not based upon any improper or fraudulent conduct on his part. Their theory is that Mrs. Holland was a trustee; that her sole duty as trustee was to turn the property over to the *cestuis,* that is, to the creditors of Mr. Holland. Their theory is that as a trustee she had no right to pay any of the property to anybody else. Therefore, if anybody received from this trustee (Mrs. Holland) any of the trust property, even under the most creditable conditions, he could be compelled to return it to the trustee for transmission to the *cestuis.*

To be sure, scattered through their brief are occasional insinuations intended perhaps to color the picture slightly against Lamb, but there are no al-

legations of fact advanced by them from which any conclusion of improper conduct on Lamb's part could be drawn. The fees to a large extent were paid for his services in defeating a tax claim for over $600,000.00 which would have depleted the trust fund by that amount. There is no claim that the fees paid were excessive for the services rendered.

Therefore, despite occasional insinuations against Lamb's good faith, the sufficiency of this petition as a supplemental bill for full equitable relief, must rest upon the naked legal proposition that Mrs. Holland was a trustee of all her property from the time the creditors' bill was filed; that she could turn over portions of it to no one but the *cestuis,* that is, the creditors of Mr. Holland; and that anyone such as Lamb, who received any portion of her trust property, could be made to return it despite every element of good faith and valuable consideration.

Such a doctrine is a harsh one. We are therefore at liberty to point out to the Court the limitations on the doctrine and the respects in which this particular petition, regarded as a supplemental bill, falls short of stating the allegations which would be requisite to hold a defendant upon such a theory.

1. In order that an equitable lien may attach to property, it is essential that such property be specificially described in the bill.

> "To have that effect, a bill must be so definite in the description, that anyone reading it can learn thereby what property is intended to be made the subject of litigation."
>
> *Miller v. Sherry,* 69 U. S. 237, 250.

In the present case the original creditors' bill not only failed to describe all of Mrs. Holland's property

against which the claims were being asserted, but admitted that, with the exception of a few small parcels of real estate, such property could not be described. (R. 9-11, 19, 21, 27) The supplemental bill, if the petition may be so treated, did not predicate any cause of action upon fraud. The gravamen of the complaint was that Lamb had received in payment for legal services, the sufficiency of which was not questioned, property subject to the creditors' equitable lien arising by virtue of their having filed a suit. But inasmuch as Mrs. Holland's property subject to such lien was not properly described, either in the original bill or in the petition, no such lien could have existed. Consequently, the petition, even if it can at this stage be warped into a supplemental bill, did not on its face allege facts sufficient to state a cause of action.

2. It is elementary that in order for an equitable lien to attach by virtue of the mere filing of a creditor's bill, the property sought to be charged with such lien must be within the jurisdiction of the Court. With the exception of a few specific parcels of real estate (which not having been transferred to Lamb, are not here involved), neither the original creditors' bill nor the petition specifically alleged that properties transferred to Lamb had been within the jurisdiction of the Court. For this reason, also, the petition, if treated as a supplemental bill, was defective on its face and its dismissal was not improper.

Consequently, Petitioner contends finally that even if this Court should countenance Respondents' attempt to treat the petition as a supplemental bill,—that is, in a manner which neither Court nor parties ever remotely considered—the action of the District Court

in dismissing the petition and discharging the rule, was not improper because under the widest concept of the doctrine of equitable liens, that pleading failed to state a cause of action.

In concluding their brief, Respondents refer to an opinion of the Grievance Committee of the American Bar Association. (pp. 46-48.) This citation raises the question of the propriety of Lamb's professional conduct, and while that question is not presented at this stage of the proceeding, in reply to the charges against him, it is submitted that when the facts of record are examined, there cannot be the slightest doubt that his conduct was upright and honorable and in strict conformity with the highest standards of professional ethics.

Lamb was first employed to defend a claim of the Bureau of Internal Revenue for large amounts of income taxes proposed to be collected from Mrs. Holland. He successfully contested that claim, and brought about a large reduction in the amount demanded; and a closing agreement definitely fixing Mrs. Holland's liability for all taxes for the years 1916 to 1927 inclusive, was entered into pursuant to the Revenue Act of 1928. (R. 151-153.) For these services Mrs. Holland paid him the sum of $25,000.00 in fees, and reimbursed him for expenses incurred. (R. 157.) As a result of these services, Mrs. Holland's entire estate was saved from a serious depletion and such saving inured to the benefit of the Respondents when their claims against Mrs. Holland were thereafter established.

Beginning in December, 1928, Lamb was further employed to defend Mrs. Holland in the suits brought against her by the so called creditor banks, including

the suit instituted by Cramer, herein referred to by the District Court number as cause No. 129. (R. 155.) When Lamb entered into this employment, he was confronted by pleadings which presented claims against Mrs. Holland totalling only $132,151.05 (See original brief, page 27, footnote), and alleging that Mrs. Holland then held more than $2,000,000.00 of property which she had received from her husband in addition to a separate estate of undetermined amount, which was recognized as having been acquired from other sources. (R. 20, 27.) Under these circumstances, there appeared to be a large margin of property belonging to Mrs. Holland even if the creditors' claims should be established in full. In addition, Lamb defeated an intervention filed by the United States which claimed $681,163.40 for income taxes theretofore assessed against Mr. Holland. (R. 153-154.) His services in defeating this claim likewise inured to the benefit of the Respondents, as well as to Mrs. Holland. For services in defending these suits and other litigation in connection therewith, Mrs. Holland paid Lamb from time to time amounts totalling $35,000.00. (R. 157, 159.)

It was not until after all of these services had been performed and the payments made to Lamb, that other creditors succeeded in obtaining judgments against Mr. Holland totalling over $7,000,000.00 which were then presented by intervention in the Cramer suit. (R. 118, 196.) Until such interventions were filed, there was no basis whatever for any claim that such creditors had any lien upon Mrs. Holland's property or that there was any constructive trust in their favor. This is wholly unlike the situation described in the Grievance Committee opinion cited, where property received by the attorney consisted of real estate, specifi-

cally described and identified, and where the claim in litigation, if successful, would clearly embrace the entire property.

Under such circumstances it is submitted that the acceptance of reasonable fees for the performance of legal services to Mrs. Holland in these various matters cannot be made the subject of any just criticism.

It is respectfully submitted that for the reasons advanced in the foregoing brief, the decree of the Circuit Court of Appeals should be reversed, and the order of the District Court affirmed.

Respectfully submitted,

EDWARD B. BURLING,
EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

APPENDIX.

Chronology.

Creditor's bill by Cramer (R. 58).	July 23, 1928.
Services rendered by Lamb to Mrs. Holland in tax case (R. 151-153).	August 7, 1928, to November, 1929.
Attorney's fees paid to Lamb (R. 156-157; 196).	August 7, 1928, to December 16, 1929.
Other judgment creditors with claims over $7,000,000.00 intervened (R. 118).	April 17, 1930.
Petition to punish Lamb for contempt filed (R. 127).	April 21, 1930.
Rule to show cause served on Lamb (R. 131).	April 21, 1930.
To appear on (R. 129).	April 22, 1930.
Continued to (R. 147; 175-177).	April 30, 1930, and to June 9, 1930; and to July 29, 1930.
Receiver appointed (R. 133, 146).	April 30, 1930.
Injunction issued (R. 127).	April 22, 1930.
Final Decree on creditor's bill entered (R. 146).	April 30, 1930.
Receiver started suit against Lamb on (R. No. 432, p. 7).	April 30, 1930.
Order appealed from, discharging Lamb on contempt charge and dismissing petition (R. 177).	July 29, 1930.
Appeal filed (R. 177-180).	July 29, 1930.

FILE COPY

FILED
OCT 20 193
CHARLES ELMORE CRO
CLER

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

NO. 432

WILLIAM E. LAMB, Petitioner

vs.

STERLING B. CRAMER, ET AL, Respondents

STATEMENT OF FACTS AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

GREEN, GREEN & JACKSON,
ROBERSON & COOK,
MAYNARD, FITZGERALD & VENABLE,
of Counsel.

Subject Index.

	Page
ADDRESS	1.
JURISDICTION	2.
STATEMENT OF FACTS	3-5.
REASONS RELIED UPON IN OPPOSITION TO THE ISSUANCE OF THE WRIT	5.
a. Because the judgment appealed from was not one rendered in favor of the petitioner in a criminal contempt case	5-8
GOMPERS vs. BUCKS STOVE & RANGE CO. 221 U. S. 418.	
b. Jurisdiction of the Circuit Court of Appeals was from final decree in district court	8.
WECKER vs. NAT. ELEV. & STAMPING CO., 204 U. S. 176.	
DETROIT & M. R. CO. vs. MICHIGAN R. R. COM. 240 U. S. 564.	
McALLISTER vs. CHESAPEAKE & O. R. R. CO. 243 U. S. 302.	
WILSON vs. REP. IRON & STEEL CO., 257 U. S. 92.	
ROSENBERG BRO. & CO. vs. CURTIS BROWN CO. 260 U. S. 516.	
EMPIRE RE. CO. ET AL. vs. BROOKS 232 FED. (C. C. A. 5) 641.	

Page

c. Jurisdiction of district court over Petitioner - - - - - - - - - - - 9-10.

LONG vs. CHOCTAW OKLA. CO. 160 FED. 365.

EQUITY RULE 11.

ILL. STEEL CO. vs. PUTNAM, 68 FED. (C. C. A. 5) 517.

ADAMS vs. MERC. TR. CO. 66 FED. (C. C. A. 5) 620.

ROOT vs. WOOLWORTH, 150 U. S. 40.

WHITE vs. EWING, 159 U. S. 36.

METCALF vs. BARKER, 187 U. S. 165.

STORY'S EQUITY PLEADING, 10th Ed., Chap. 8, SECTION 342-343.

d. Decision of the Circuit Court of Appeals not in conflict with decision of this court or other circuits - - - - - - - - - - - 11.

DOYLE vs. LONDON GUAR. CO., 204 U. S. 599

CHRISTENSEN ENG. CO., MATTER OF 194 U. S. 458.

GOMPERS vs. BUCKS STOVE & RANGE CO. 221 U. S. 418.

HULTBERG vs. ANDERSON, 214 FED. 349.

CLAY vs. WATERS, 178 FED. 385.

Page

BRIEF AND ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI HEREIN - - - - - - - - - - 13.

1. Jurisdiction to issue certiorari will be exercised sparingly and only in cases of peculiar gravity and general importance - - - - - - - 13.

LAU OW BEW, 141 U. S. 583.

LAU OW BEW vs. U. S. 144 U. S. 47.

AMERICAN CONST. CO. vs. JACKSONVILLE R. R. CO., 148 U. S. 372.

FORSYTH vs. HAMMOND, 166 U. S. 506.

HAMILTON BROWN SHOE CO. vs. WOLF, 240 U. S. 251.

HOUSTON OIL CO. vs. GOODRICH, 245 U. S. 440.

IN RE TAMPA SUBURBAN R. R. CO. 168 U. S. 583.

FURNESS-WITHY & CO. vs. YANG-TSZE INS. ASSO., 242 U. S. 430.

IN RE HUGULEY MFG. CO. 184 U. S. 297.

HYDE vs. SHINE, 199 U. S. 62.

RE HITZ, 111 U. S. 766.

MAGNUM IMPORT CO. vs. COTY, 262 U. S. 159.

2. Conflict of decisions must be on same matter in order to justify certiorari - - - - - - 15.

KELLER vs. ADAMS, 264 U. S. 314.

Page

3. Certiorari will be dismissed if no real conflict in decision - - - - - - - - - - - - 16.

LAYNE & B. CORP vs. WESTERN WELL WKS., 261 U. S. 87.

4. Certiorari will not be granted where there is any other remedy - - - - - - - - - - 17.

TAMPA SUB. R. R. CO., IN RE 168 U. S. 583.

5. The judgment of the Circuit Court of Appeals from which certiorari is requested must be a final judgment - - - - - - - - - - - 17.

FULLER CO. vs. OTIS ELEV. CO., 245 U. S. 489.

SECTION 347, TITLE 28 U. S. CODE.

DENVER vs. N. Y. TR. CO., 229 U. S. 123.

6. The passage of Section 347, Title 28, U. S. Code did not change the grounds or causes for the issuance of writs of certiorari or make such writs procurable under less extraordinary circumstances - - - - - - - - 17.

U. S. SUPREME COURT RULE 35.

U. S. SUPREME COURT RULE 38.

7. U. S. Code, Title 28, Sec. 377 not applicable 18.

8. Detail answer of petitioner's argument under subdivision V, pgs. 9, 10 and 11, paragraphs 1, 2 and 3 of his brief - - - - - - - 17.

SLACKER vs. O'CONNER, 278 U. S. 188.

MIDLAND BANK vs. INS. CO., 277 U. S. 346.

FAYERWEATHER vs. RITCH, 195 U. S. 276.

SUMMARY - - - - - - - - - - - - - - - 21.

CASES CITED

	Page
Adams vs. Merc. Tr. Co., 66 Fed. (C. C. A. 5) 620	9
American Const. Co., vs. Jacksonville, Etc. Co. 148 U. S. 372	13, 14
Bessette vs. W. B. Conkey Co., 194 U. S. 324	11, 12
Christensen Eng. Co., Matter of 194 U. S. 458	11, 12
Clay vs. Waters, 178 Fed. 385	11, 12
Cramer, et al, vs. Lamb, 48 Fed. (2nd) 537	11, 12
Denver vs. N. Y. Tr. Co., 229 U. S. 123	18
Detroit & M. R. Co. vs. Mich. R. R. Com. 240 U. S. 564	9
Doyle vs. London Guar. Co., 204 U. S. 599	11, 12
Empire Trust Co. et al vs. Brooks, 232 Fed. (C. C. A. 5) 641	9
Equity Rule 11	9
Fayerweather vs. Ritch, 195 U. S. 276	19, 20
Forsyth vs. Hammond, 166 U. S. 506	14
Fuller Co. vs. Otis Elev. Co., 245 U. S. 489	17
Furness-Withy & Co. vs. Yang-Tsze Ins. Asso. 242 U. S. 430	14
Gompers vs. Bucks Stove & Range Co., 221 U. S. 418	6, 8, 11, 12
Hamilton Brown Shoe Co. vs. Wolf, 240 U. S. 251	14
Hitz, In Re, 111 U. S. 166	14
Houston Oil Co. vs. Goodrich, 245 U. S. 440	14
Huguley Mfg. Co., In Re, 184 U. S. 297	14
Hultberg vs. Anderson, 214 Fed 349	11, 12
Hyde vs. Shine, 199 U. S. 62	14
Ill. Steel Co. vs. Putnam, 68 Fed. (C. C. A. 5) 517	9
Keller vs. Adams-Campbell Co., 264 U. S. 314	16

CASES CITED (Cont.)

	Page
Lau Ow Bew, 141 U. S. 583	13
Lau Ow Bew vs. U. S. 144 U. S. 47	13
Layne & Bowler vs. Western Well Wks., 261 U. S. 387	16
Long vs. Choctaw Okla. Co., 160 Fed. 365	9
McAllister vs. Chesapeake & Ohio R. R. Com. 240 U. S. 564	9
Magnum Import Co. vs. Coty, 262 U. S. 159	15
Metcalf vs. Barker, 187 U. S. 165	9
Midland Bank vs. Ins. Co., 277 U. S. 346	19
Root vs. Woolworth, 150 U. S. 40	9
Rosenberg Bro. & Co. vs. Curtis Brown Co., 260 U. S. 516	9
Schmitt vs. Lamb, 48 Fed. (2nd) 533 (No. 433 on this docket)	2
Slacker vs. O'Conner, 278 U. S. 188	19
Storey's Equity Pleading, 10th Ed. Chap. 8, Sect. 342-343	9
Tampa Suburban R. R. Co., In Re, 184 U. S. 583	14, 17
U. S. Code, 347 (Jud. Code 240) Title 28	2, 13, 17, 18, 19
U. S. Code, 377 (Jud. Code 262) Title 28	18
U. S. Statutes at Large, 43, Pg. 938	18
U. S. Supreme Court Rule 35, and Rule 38	18
Wecker vs. Nat. Elev. & Stamping Co., 204 U. S. 176	8
White vs. Ewing, 159 U. S. 36	9
Wilson vs. Republic Iron & Steel Co., 257 U. S. 92	9

OPINIONS OF COURTS BELOW IN THIS CAUSE

Cramer vs. Lamb, 48 Fed. (2d) 537, Rec. 207	1
Cramer vs. Lamb, Decree Dist. Ct. (Rec. 175-177)	1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

NO. 432

WILLIAM E. LAMB, Petitioner

vs.

STERLING B. CRAMER, ET AL, Respondents

STATEMENT OF FACTS AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition herein is for a writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit to review a judgment rendered by that court on April 9, 1931, reported in 48 Fed. (2nd), 537 (Rec. 207). The decree of the district court, which was rendered without other opinion, appears on pages 175-177 of the record herein. The petition for certiorari is requested under Section 347, Title 28, U. S. Code. The court is referred for a better understanding of this case to the companion case hereto, namely, No. 433, on the docket of this court wherein a

similar writ of certiorari is requested of the Circuit Court of Appeals for the Fifth Circuit on matters connected herewith.

I

JURISDICTION

The right of the petitioner to writ of certiorari from this court to review the decision of the Circuit Court of Appeals below is respectfully challenged on the following grounds:

1. The decision of the court below is not a final decision.

2. There is no special or important reason for the granting of the writ of certiorari asked for herein.

3. The writ of certiorari asked for here is not one to review a decision of the Circuit Court of Appeals, (a) where said decision is in conflict with the decision of another Circuit Court of Appeals on the same matter; or (b) where it has decided an important question of local law in a way probably in conflict with applicable local decisions; or (c) where it has decided an important question of general law in a way probably untenable or in conflict with the weight of authority; or (d) where it has decided an important question of federal law which has not been, but should be, settled by this court; or (e) where it has decided a federal question in a way probably in conflict with applicable decisions of this court; or (f) where it has so far departed from the accepted and usual course of judicial proceeding, or so far sanctioned such a departure by a lower court as to call for an exercise of this court's power of supervision.

4. The writ of certiorari asked for herein is not one which will be granted under the terms of Section 847, Title 28, U. S. Code.

II.

STATEMENT OF FACTS

1. In an equity case pending in the District Court of the United States wherein it was sought to set aside certain alleged fraudulent conveyances, and wherein a lien, both by statute of the state and rules of decision of the federal court, was claimed on certain property involved in said suit, an ancillary petition was filed (Rec. 122) as against petitioner here and others alleging the fraudulent transfer, pending suit, to petitioner of a part of the corpus of the funds sued for and upon which lien was claimed (Rec. 122), and alleging that petitioner and others (a) were in contempt of the court for such transfer (Rec. 125), and (b) that petitioner and others should be made parties to the original suit (Rec. 126), and that such transfers should be set aside and full relief be given to the plaintiffs in the original suit.

2. On the said ancillary petition an order was entered (Rec. 128) in the original equity suit making petitioner and other parties defendant to the original suit (Rec. 130) for all purposes, and especially (a) for the purpose of setting aside any such conveyances and ordering a turn-over, and (b) to show cause why petitioner and others should not be held in contempt for such transfers. Service of a copy of the order as a rule to show cause was ordered.

3. Petitioner here then filed in the district court (Rec. 147) in the original suit a full and complete answer to the charges made against him and asked that he be allowed to retain the sums alleged to have been obtained wrongfully (Rec. 166) and treated said ancillary petition as (a) petition to turn over money, or to set aside fraudulent conveyances, and (b) order to show cause as for contempt, answering both (Rec. 167) and prayed complete exonoration (Rec. 167) and at a later date, forgetting his prior general appearance by answer (Rec.

147-172) petitioner again appeared in court and by "motion to quash the citation," so called, (Rec. 173-175) challenged by Paragraph 15 of said "motion to quash the citation," the jurisdiction of the district court over the petitioner. Reference is here made to the following paragraphs in this "motion to quash the citation." Paragraph 11 (Rec. 174) where the ancillary petition is treated as misjoining; (a) a petition to turn over, and (b) a criminal contempt. Paragraph 12 (Rec. 174) objects to the form of the proceeding. Paragraph 1 (Rec. 173) objecting to the service of the ancillary petition. Paragraph 15 (Rec. 175) alleges the exemption of petitioner from service because petitioner was a non-resident attorney attending court in a foreign jurisdiction at the time service was made. (See Case No. 433 on this docket, U. S. Supreme Court this term).

4. In spite of the general appearance of the petitioner and his plea for exoneration and general relief (Rec. 147-172) the district court in chambers heard the "motion to quash the citation," and by decree in chambers (Rec. 175-177) without evidence of any kind, ordered (Rec. 176) "that the said motion of the said Wm. E. Lamb to quash the process and dismiss the petition for the citation of Wm. E. Lamb for contempt and for an order to turn over money paid him by the defendant be and the same is hereby sustained and the rule to show cause is hereby discharged, and the said petition is hereby dismissed, without prejudice to the rights of the plaintiff, the receiver, or any interested party, to proceed civilly in the matter as they, or any of them, may be advised and the said Wm. E. Lamb is dismissed hence without day," etc. The said quashal being made on the sole ground that petitioner being a non-resident attorney was not subject to service. (See Case 433, docket U. S. Supreme Court, this term).

5. Plaintiff, in the district court, then appealed the case to the Circuit Court of Appeals for the Fifth Circuit where the case appeared as No. 6004. In that

court the petitioner here moved to dismiss the appeal, (a) because the order appealed from was a judgment in criminal contempt in favor of appellee, or (b) was an order entered in a civil case which was not final and, therefore, not appealable. The case was heard by the Circuit Court of Appeals on the motion to dismiss and on the merits. Thereupon, the Circuit Court of Appeals reversed the decree of the lower court. See Judge Dawkin's opinion (Rec. 207-209) and order of court (Rec. 209). By reference to the opinion of Judge Dawkins (Rec. 207-209) it will be seen that the Circuit Court of Appeals in effect ruled that the ancillary petition and order, service on him of a copy of said order, and his answer and plea of exoneration made petitioner a party to the original case, and gave the district court full jurisdiction and it should not have quashed the citation.

III.

REASONS RELIED UPON IN OPPOSITION TO THE ISSUANCE OF THE WRIT.

1. Upon a reading of the statement of facts herein involved as set forth in II, **supra**, it will be seen that the propositions set forth in petition for writ of certiorari under heading A therein, Paragraphs 1, 2 and 3 are not really involved.

2. The reasons relied upon for the allowance of the writ as set forth under heading B in said petition for writ of certiorari, subdivisions 1, 2, 3, 4 and 5, are not valid:

(a) Because the judgment appealed from was not rendered in favor of petitioner in a criminal contempt case.

If we should extend this brief to an interminable length we could draw no better distinction between civil and criminal contempt than is drawn in the

opinion of Justice Lamar in the case of **Gompers vs. Bucks Stove & Range Co., 221 U. S. 418.** Upon a reading of that opinion it will be seen that this case does not involve any criminal contempt. Upon reference to the record of the ancillary petition filed in the original case (Rec. 122-126) it will be seen that, with reference to the petitioner Lamb, it was merely set forth under Paragraph 4 of the ancillary petition (Rec. 124) that petitioner Lamb had received approximately $90,000.00 of the funds involved in the original suit, and by Paragraph 5 (Rec. 125) of said ancillary petition that the manner of receiving the said $90,000.00 was contumaceous and in disregard of the equities and the power, right and authority of the court, and (Rec. 126) no relief was asked except that the petitioner be made a party to the cause, and that the court "grant to the plaintiffs full and complete general relief herein as to equity may seem meet," and that a temporary restraining order be issued enjoining further transfers or disposals of the property involved. On April 21 1930, (Rec. 128-131) the petitioner was made a party to the original suit and served with a copy of the decree making him such party, said decree containing (Rec. 130) order to show cause as for contempt for a turn over. Parts of the order applicable are as follows:

"It is hereby ordered, adjudged and decreed that a copy of this decree be forthwith served upon each of the above named parties, severally, and that they and each of them, severally and respectively, be commanded to be and appear before this Court, the Honorable Edwin R. Holmes, presiding as District Judge, at the Courtroom, in the Courthouse, at Clarksdale, Mississippi, at 9 a. m., April 22nd, 1930, then and there, severally and respectively, to show cause, if any they have or can, why they and each of them should not be adjudged to be in contempt of this Court under the allegations

as to them made that they and each of them accepted transfers of property in the possession of this Court with the intent to hinder, delay and defraud this Court in the exercise of its jurisdiction with reference to said property and every part thereof.

And it is further ordered, adjudged and decreed that said parties and each of them further appear at the time and place mentioned, and severally and respectively show cause, if any they have or can, why they should not be adjudged to hold all of said property described subject to the jurisdiction of this Honorable Court, to be dealt with by this Honorable Court as fully and completely as if said transfers had never been made, and said property and every part thereof had remained in the possession and under the control of this Honorable Court;

It is further ordered that said parties and each of them show cause, if any they have or can, why they and each of them should not be severally adjudged in cotempt of this Court and therefor punished in manner and form as equity and good conscience and the dignity and authority of this Court may demand.

It is further ordered that a copy hereof be delivered to the Marshal of this Court to be by him personally served upon each of the above named defendants, and that pursuant thereto that said named parties be made parties to this cause and do herein appear and show cause why that by plaintiffs asked should not be done, and why that the essential to maintain the dignity and authority of this Court be not performed." (Rec. 129-130).

Thereafter on the next day, to-wit, April 22, 1930, (Rec. 127) hearing on that part of the ancillary petition for a temporary injunction was waived and the injunction issued by consent order (Rec. 127) while the peti-

tioner was present in court as the attorney representing himself and the original defendants in the cause. Later petitioner answered fully. (Rec. 147-172).

It is, therefore, respectfully submitted that neither the ancillary petition (Rec. 122-127) nor the order (Rec. 128-131) and citation constituted, or were any attempt to have the petitioner answer a criminal contempt charge.

Gompers vs. Bucks Stove & Range Co., 221, U. S. 418

(b) The Circuit Court of Appeals had full jurisdiction to pass upon and review the district court on its order quashing the citation, (Rec. 175-177, inclusive) since the order and decree of the court appealed from was a final decree. In this connection see that part of the order of the district court (Rec. 176) "that the said motion of the said Wm. E. Lamb to quash the process and dismiss the petition for the citation of Wm. E. Lamb for contempt, and for an order to turn over money paid him by defendants, be and the same is hereby sustained, and the rule to show cause is hereby discharged and the said petition is hereby dismissed without prejudice to the rights of the plaintiff, the receiver, or any interested party, to proceed civilly in the matter as they, or any of them, may be advised; **and the said Wm. E. Lamb is dismissed hence without day,**" etc.

The dismissal of Wm. E. Lamb as a party to the case was final and just what he sought since he was a non-resident attorney and it was his contention that while attending the trial of a law suit in a foreign jurisdiction he could not be served with any writ. This action of the district court effectually terminated the particular case as to the petitioner and was final.

Wecker vs. National Elevator & Stamping Co., 204 U. S. 176.

Detroit & M. R. Company vs. Michigan R. R. Commission, 240 U. S. 564.

McAllister vs. Chesapeake & Ohio R. R. Company 243 U. S. 302.

Wilson vs. Republic Iron & Steel Co., 257 U. S. 92.

Rosenberg Bros. & Company vs. Curtis Brown Company, 260 U. S. 516.

Empire Trust Company, Et Al., vs. Brooks, 232 Fed. (C. C. A. 5) 641.

(c) The petitioner having been made defendant to the original case in the court below for the purpose (1) of setting aside the alleged fraudulent conveyances to him, or (2) to make him turn over money that belonged in the jurisdiction of the court, and having answered seeking exoneration (Rec. 147-172) was then a party to the original cause and the district court had jurisdiction over the subject matter as well as the parties, and had a right to try those matters summarily:

Long vs. Choctaw Oklahoma Co., 160 Fed. 365

Equity Rule 11.

Illinois Steel Co., vs. Putman, 68 Fed. (Fifth Cir-Circuit) 620.

Adams vs. Mercantile Trust Co., 66 Fed. (Fifth Circuit) 620.

Root vs. Woolworth, 150 U. S. 40

White vs. Ewing, 159 U. S. 36

Metcalf vs. Barker, 187 U. S. 165

Story's Equity Pleading, 10th Ed., Chap. 8, Section 342-343.

The fact that the decree in the district court (Rec. 131-146, inclusive) was signed and approved by one of the defendants and some of her attorneys, and the further fact that the following was inserted in the decree, "the parties plaintiff, and interveners expressly agreeing thereto in open court, and likewise said Florence T. Holland, are agreed to the matters and things in this decree contained;" (Rec. 146). The Planters Manufacturing Company not to be prejudiced hereby or Wm. E. Lamb, or Butler, Lamb, Foster & Pope not to be prejudiced hereby" does not make the said decree a consent decree, especially in view of the fact that the court in said decree (Rec. 134) "hereby reserves to itself full jurisdiction of this cause to make such other and further orders as it may deem proper, and as equity may require, both as to increasing the amount of the estate, and/or increasing the amount due and owing to any party plaintiff, and/or uncovering additional property and disposing of any adverse claims that may be interposed as against any portion of said estate;" and further, (Rec. 138) "This court reserves full jurisdiction of the cause to make any other and further orders which may be, from time to time, essential for the creation, preservation, and/or disposition of the relative rights of the several parties hereto, or any claimants, of any portion of the estate, now, or hereafter created."

The fact is those portions of the decree quoted show beyond dispute that (1) the hearing on the petitioner Lamb's matter was not to be prejudiced, and (2) full powers were reserved to dispose of that, therefore, the case in the lower court was pending in all of its bearings. The defendant Lamb was a party thereto and the district court had no right to dismiss him entirely on the motion "to quash the citation," therefore, the Circuit Court of Appeals had a perfect right to reverse the district court in this, and such a reversal is not in conflict with any other decision either of the Circuit Courts of Appeals or of this court.

(d) The decision of the Circuit Court of Appeals in this cause is not in conflict with the decisions of this court nor of any other circuit court of appeals. The petitioner in his brief at Page 6 has set forth five cases with which he alleges the holding here is in conflict.

Doyle vs. London Guaranty Co., 204, U. S. 599.

Matter of Christensen Engineering Company, 194 U. S. 458

Gompers vs. Bucks Stove & Range Co., 221 U. S. 418

Hultberg vs. Anderson, 214 Fed. 349

Clay vs. Waters, 178 Fed. 385.

Taking these cases up seriatim; the case of **Doyle vs. London Guaranty Company, supra,** the defendants were ordered "to produce within twenty days, in the office of the clerk of the court certain pay sheets, time books, etc." This was not done. A petition alleging disobedience of the above order was filed, and a rule to show cause as for contempt was issued. Subsequently upon the hearing of the rule to show cause, a judgment was entered "that defendants are guilty of contempt in disobeying the order referred to," and a further order was issued that if the defendants produced in the office of the clerk on or before a later date certain of the pay rolls, time sheets, they were ordered to pay no more than the costs, but if they failed, to be sentenced to imprisonment for 60 days and a writ of error was allowed to the Circuit Court of Appeals. This court held that the Circuit Court of Appeals had no jurisdiction of the writ of error because there had been no final order, and citing the very case cited by counsel in this case above, viz: **Bessette vs. W. B. Conkey Co., 194 U. S. 324,** and the **Matter of Christensen Eng. Co., supra,** this court says "as the result of those decisions we deem it settled that an order punishing for contempt made in the progress of

the case, when not in the nature of an order in a criminal proceeding, is regarded as interlocutory, and to be reviewed only upon appeal from a final decree in the case. The **Doyle** case was an appeal by the defendant. This court further held on **Page 603, 204 U. S.** that in the **Christensen** case and the **Bessette** case, **Supra,** this court had no jurisdiction to review judgment in contempt proceedings, criminal in their nature. The **Gompers vs. Bucks Stove and Range Company** case, **supra,** was held by the court to be a criminal contempt case and Justice Lamar went fully into the distinction between civil and criminal contempt. Of course, any judgment for criminal contempt in favor of the defendant is not appealable. The **Hultberg case, supra,** was a case decided by the Circuit Court of Appeals for the Seventh Circuit wherein the witnesses refused to testify before a master or commissioner, and upon being called before the court in answer to a rule issued on petition filed, the witness was discharged at the cost of the petitioner. The Circuit Court of Appeals held that the release of the defendant in the criminal contempt charge was not appealable, or reviewable. In the case of **Clay vs. Waters, supra,** the Circuit Court of Appeals for the Eighth Circuit, on an appeal from the judgment of the district court wherein the defendant was held guilty of criminal contempt and imprisoned for nine months with leave to purge the contempt and be released by payment or turn over, was a criminal contempt decided against defendant and was reviewable, and the order of the district court was affirmed.

It will be seen, therefore, that none of the cases cited by counsel are in conflict with the Circuit Court of Appeals for the Fifth Circuit in this case when it held (Rec. 209) "for the reasons stated in cause No. 6072, this day decided, we think the funds were in the constructive possession of the court to the knowledge of Lamb and his clients, and that plaintiffs were at liberty to proceed either by bill in equity, as was done, and/or by rule for contempt, or by both means, to compel their

restoration to the custody of the court's officers. We are, of the opinion, therefore, that the rule did state a ground for relief and the service under the circumstances was properly made. The decree below dismissed the rule by quashing the service and hence was undoubtedly final, notwithstanding the reservation of the right 'to proceed civilly.' "

(e) The decision of the Circuit Court of Appeals reversing the district court is not final since the effect of the Circuit Court of Appeals' decision is to send the petitioner back to the district court to answer the rule, or rather to try the case on his answer already filed therein and the effect of this petition for certiorari is to present to this court a question, as to whether or not the petitioner shall appear in the district court in which he has already answered, to try the merits of his cause.

BRIEF AND ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI

The writ of certiorari is asked here under and by virtue of **Section 347, Title 28, U. S. Code.** This section was **Judicial Code, Section 240,** amended February 13, 1925, to read as at present. Under Section 240 of the Judicial Code prior to the amendment of February 13, 1925, it was consistently held by this court:

1. The jurisdiction to issue certiorari will be exercised sparingly and only in cases of peculiar gravity and general importance:

Lau Ow Bew, 141 U. S. 583

Lau Ow Bew vs. U. S., 144 U. S. 47

American Construction Company vs. Jacksonville Railroad Company, 148 U. S. 372

Forsyth vs. Hammond, 166 U. S. 506

Hamilton Brown Shoe Co., vs. Wolf, 240 U. S. 251

Houston Oil Co., vs. Goodrich 245 U. S. 440.

We judge from the remarks of Mr. Justice McReynolds in the case of **Furness-Withy vs. Yang-Tsze Ins. Asso.**, that under the statute as it then stood (Oct. 1916) hundreds of additional cases were being taken to the Supreme Court by certiorari, and that, therefore, it was necessary to give them the closest attention and to allow the writ only when absolutely necessary.

Furness-Withy & Co. vs. Yang-Tsze Ins. Asso., 242 U. S. 430.

In fact it has been held that certiorari will not be granted where there is any other remedy, and since in the present case this petitioner has the remedy of going back to the district court and having his case tried on the merits and then appealing to the Circuit Court of Appeals before asking for the writ of certiorari, his remedy is plain and adequate.

In re Tampa Suburban R. R. Co., 168 U. S. 583.

In re Huguley Mfg. Co., 184 U. S. 297.

This court has consistently held that while the writ of certiorari is discretionary it is only granted upon extraordinary reasons and is often denied when the power to issue is unquestioned.

Hyde vs. Shine, 199 U. S. 62

Re Hitz 111, U. S. 766

American Const. Co. vs. Jacksonville, Etc., Co., 148 U. S. 372.

Mr. Chief Justice Taft said in the case of **Magnum Import Company vs. Coty:**

> "The question how the court should exercise this power next arises. The jurisdiction to bring up cases by certiorari from the Circuit Court of Appeals was given for two purposes; first, to secure uniformity of decisions between those courts in the nine circuits, and, second, to bring up cases involving questions of importance which it is to the public interest to have decided by this court of last resort. The jurisdiction was not conferred on this court merely to give the defeated party in the Circuit Court of Appeals another hearing. Our experience shows that 80 per cent of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ."

Magnum Import Co., vs. Coty, 262 U. S. 159.

The true rule is that even though the writ be granted to the Circuit Court of Appeals such cases will not be reversed on certiorari unless it amounts to a miscarriage of justice.

2. Justice Taft held that this court would not entertain requests for certiorari of an ordinary patent case unless it be necessary to reconcile decisions of the Circuit Court of Appeals on the same patent.

The petitioner herein seems to think that this court will issue the writ of certiorari to review the Circuit Court of Appeals decision because in the opinion of petitioner that decision conflicts in principle with certain decisions of circuit courts of appeals in other cases not related to the present. We do not understand this to be the rule.

Mr. Chief Justice Taft said in the **Keller vs. Adams** case:

> "Such an ordinary patent case, with its issues of inventions, breadth of claims, and non-infringe-

ment, this court will not bring here by certiorari unless it be necessary to reconcile decisions of the Circuit Court of Appeals on the same patent. We, therefore, find ourselves mistaken in assuming that an important issue of general patent law, under Section 4916, Rev. Stat. (Comp. Stat. Sec. 9461, 7 Fed Stat. Anno. 2nd, Ed. P. 211) is here involved. The result is that an order must be entered dismissing the writ of certiorari as improvidently granted at the cost of the petitioner. Layne & B. Corp. vs. Western Well Works, 261 U. S. 387, 67 L. Ed. 712, 43 Sup. Ct. Rep. 422; Furness W. & Co. vs. Yang-Tsze Ins. Asso., 242 U. S. 430, 61 L. Ed. 409, 37 Sup. Ct. Rep. 141; United States vs. Rimer, 220 U. S. 547, 55 L. Ed. 578, 31 Sup. Ct., Rep. 596; Keller vs. Adams, 264 U. S. 314."

3. If upon examination of such a case there is no real conflict of such decision the petition will be dismissed.

Layne & B. Corporation vs. Western Well Works, Inc., 261 U. S. 387.

In the **Layne & Bowler** case, **supra**, Judge Taft also remarked that since there was no conflict in the decisions of the Circuit Courts of Appeals on the same patent, the writ of certiorari in that case would be dismissed stating:

"If it be suggested that as much effort and time as we have given to the consideration of the alleged conflict would have enabled us to dispose of the case before us on its merits, the answer is that it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of **importance to the public** as distinguished from **that of the parties** and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal. The present case certainly comes under neither head."

4. Certiorari will not be granted where there is any other remedy.

In Re Tampa Sub. R. R. Co., 168 U. S. 583.

5. That the judgment of the Circuit Court of Appeals of which certiorari is asked must be final.

Geo. A. Fuller Co. vs. Otis Elevator Co. 245 U. S. 489.

In the **Fuller** case, **supra,** Mr. Justice Holmes delivered the opinion in the case and held:

> "It is objected to the writ of certiorari in this case that there was no final judgment; but the writ when issued to the court of appeals is not limited to cases in which final judgment has been entered, but only to cases in which the judgment when entered is final."

Of course, the judgment from which the writ of certiorari was asked in the **Fuller** case was under **Judicial Code 251** which has now been repealed but the words quoted by Justice Holmes as follows:

> "With the same power and authority in the case as if it had been carried by writ of error on appeal to said Supreme Court."

are still substantially also a part of **Section 347, Title 28, U. S. Code** under which the present writ of certiorari is requested as follows:

> "With like effect as if the cause had been brought there by unrestricted writ of error or appeal."

We take it that the last quoted words in **Section 347, Title 28, U. S. Code,** mean just what Justice Holmes said, namely, that while the power is given to issue a writ of certiorari, to Circuit Court of Appeals directing it to send

up the record in a case, either before or after a judgment or decree by such lower court, yet when the record is sent up after a judgment granted by the Circuit Court of appeals it must be on one which was final.

Denver vs. New York Trust Co., 229, U. S. 123.

6. That the passage of **Section 347 Title 28, U. S. Code An.,** which is the amendment of **Section 240, Judicial Code** by act February 13, 1925, **43 Statutes at Large 938,** did not change the grounds or causes for the issuance of writs of certiorari, or make writs of certiorari procurable under any less extraordinary circumstances is evident from the fact that this court in the revision of its rules adopted June 5, 1928, effective July 1, 1928, more than three years after the amendment of February 13, 1925, aforesaid, did not change that part of former Rule 35 contained in Paragraph 5 thereof, which provides that "a review on writ of certiorari is not a matter of right but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." And then continues to give the rules generally used in measuring the court's discretion. (Reference is here made to the rule of this court No. 38).

7. It is recognized, of course, that the Supreme Court of the United States also has the right to issue writ of certiorari in cases not provided for by Section 347, Title 28, U. S. Code, under the provisions of the other Section 377, Title 28, U. S. Code, Anno., but since the latter is rather a provision extraordinary and for the issuance of writs not specifically provided for by statute, we judge that the reasons herein given for not issuing the writ under Section 347, Title 28, U. S. Code, would apply with a greater force to requests to issue the writ under Section 377, Title 28, U. S. Code.

8. We have not attempted to answer in detail the argument of petitioner as set forth under subdivision V, Pages 9, 10 and 11 under Paragraphs 1, 2 and

3 of his brief because of the fact that he erroneously, in our opinion, bases his argument on grounds which are not valid and upon assumptions which are not justified. For instance, under Paragraph 1, Subdivision V, the argument is made that the decision of the district court was a decision in favor of the petitioner in a criminal contempt, which our brief herein has demonstrated is clearly in error. And under Paragraph 2, subdivision V, the argument is made that the judgment of the Circuit Court of Appeals was wrong because error in the appeal was only alleged on the ground that the order of the district court quashed "the service of the citation" instead of alleging that it quashed "the citation." And counsel argues that such an allegation of error was frivolous and that the Circuit Court of Appeals decided the case on the error of the district court in quashing "the citation" instead of the error of the district court in quashing "service of the citation." This is rather involved and appears to us to be more frivolous here than the alleged frivolity of error specified in the Circuit Court of Appeals. To sustain an argument on this ground petitioner cites three cases, namely: **Slacker vs. O'Conner 278 U. S. 188; Midland Bank vs. Ins. Co., 277 U. S. 346; Fayerweather vs. Ritch, 195 U. S. 276.** In answer to these three cases we say the **Slacker vs. O'Conner** case, **Supra,** was an appeal (Nov., 1928) from the Circuit Court of Appeals, Eighth Circuit, and this court held that the appeal (on writ of certiorari) was from a decree in the court below not final and taken under **Jud. Code, Section 240 B,** which is **Section 347, U. S. Code, Title 28,** where an appeal was only provided for in cases where the validity of a state statute is drawn in question, etc. With due deference to petitioner, we cannot see the application of that case to this.

In the case of **Midland Bank vs. Ins. Co., supra,** writ of certiorari was granted to the United States Circuit Court of Appeals for the Eighth Circuit, and that court was reversed because this court held that the

action of the Circuit Court of Appeals was not justified on the record before it in holding the policy of insurance involved was an illegal contract because there was nothing in the evidence received tending to show such illegality. With due deference, the applicability of that case to the case involved is not recognized.

We have already herein quoted a large part of the record and referred to enough thereof to show this court that the action of the Circuit Court of Appeals in this instance was correct and founded entirely on the record, and the errors assigned in the district court. The errors assigned in the district court appear in Rec. Pg. 179 to 180, inclusive, and appear to be only two in number and to the effect that the proceedings against petitioner in the district court were ancillary proceedings (Rec. Pg. 179) to Cause No. 129, and effectual to make the petitioner a party to the cause (Rec. Pg. 180), and second, (Rec. 190) that the answer and appearance of petitioner constituted upon his part a waiver of any plea to the jurisdiction of the district court, and, "Therefore, it is respectfully suggested and assigned here as error that the court erroneously sustained the motion to quash the **'service'** of process filed herein on the_____day of _____, 1930, for the causes set out in said motion to quash."

If counsel means by this part of his argument that the appellants there called the motion filed by petitioner a "motion to quash the service of process" instead of as petitioner there called it, "motion to quash the citation" (Rec. 173-175), we respectfully submit that the words contained in the assignment of error "for the causes set out in said motion to quash" referred to the motion whatever it might be, and that the motion itself was before the Circuit Court of Appeals and such a finely drawn argument here is not sufficient upon which to base a request for writ of certiorari.

The case of **Fayerweather vs. Ritch, supra,** was a direct appeal to the Supreme Court of the United States

from the Circuit Court of the United States for the Southern District of New York, and the decree of the circuit court was affirmed. The appeal was taken because the case involved the application of the Constitution of the United States and has, with due deference, no application to this case.

Under Paragraph 3, subdivision V, Pg. 12, of his argument in support of the petition, petitioner again relies upon the fact that the judgment of the district court from which an appeal was taken to the Circuit Court of Appeals, herein was not a final judgment and quotes again the five cases already herein disposed of under Paragraph III, 2b herein.

We submit that the argument being founded on erroneous conclusions is not applicable.

SUMMARY

The petitioner herein has no right to the writ of certiorari (a) because the decision of the court below is not in conflict with either decisions of this court, or any other circuit; (b) because the matters involved are not of general importance; (c) because the decision from which certiorari is asked has been entered by the Fifth Circuit Court of Appeals and was not a final decision; (d) because the decision in the Circuit Court of Appeals was correct.

It is, therefore, respectfully submitted that the writ herein prayed for should be denied.

GERALD FITZGERALD,
Counsel for Respondents.

GREEN, GREEN & JACKSON,
ROBERSON & COOK,
MAYNARD, FITZGERALD & VENABLE,
of Counsel.

FILE COPY

JAN 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 432

WILLIAM E. LAMB, PETITIONER

vs.

STERLING B. CRAMER, ET AL, RESPONDENTS

STATEMENT OF FACTS AND BRIEF FOR RESPONDENTS

GERALD FITZGERALD,
Counsel for Respondents

of Counsel.
SAM C. COOK.
GARNER W. GREEN,

Clarksdale (Miss.) Printing Company

SUBJECT INDEX
No. 432

	Page
STATEMENT OF FACTS	2
ARGUMENT	7
LEGAL ARGUMENT	11
I. THE DECREE OF THE DISTRICT COURT APPEALED FORM WAS NOT RENDERED IN A CRIMINAL CONTEMPT CASE	11
II. JOINING ALLEGATIONS OF CONTEMPTUOUS CONDUCT WITH PRAYERS FOR CIVIL RELIEF DOES NOT INVALIDATE WHOLE SUPPLEMENTAL PRORCEEDINGS	17
III. NO APPEAL WAS NECESSARY FROM FINAL DECREE IN MAIN PROCEEDINGS IN CAUSE No. 129. THE DECREE OF THE DISTRICT COURT IN THE SUPPLEMENTAL PROCEEDINGS WAS A FINAL DECREE AND APPEALABLE	23
IV. THE CIRCUIT COURT OF APPEALS REVERSED THE DISTRICT COURT ON ERRORS PATENT IN THE RECORD PROPERLY ASSIGNED. CIRCUIT COURT OF APPEALS MAY, HOWEVER, REVERSE ANY CASE FOR ERROR PATENT ON THE RECORD THOUGH NOT PROPERLY ASSIGNED	30
V. BY HIS ANSWER IN THE DISTRICT COURT (R. 147-177) PETITIONER SUBMITTED HIMSELF TO THE JURISDICTION OF THAT COURT AND WAIVED ANY QUESTION AS TO THE JURISDICTION OF THAT COURT OVER HIS PERSON AND COULD NOT THEREAFTER SET UP BY MOTION TO QUASH PROCESS ANY DEFENSE TO THE JURISDICTION	34

Page

VI. HAVING RECEIVED, WITH FULL KNOWLEDGE OF THE EQUITIES, A PART OF THE SUBJECT MATTER OF THE LITIGATION PENDENTE LITE, THE PETITIONER, ATTORNEY FOR THE DEFENDANT, WAS (a) BOUND BY THE RESULT OF THE LITIGATION: AND/OR (b) SUBJECT TO ANSWER TO THE COURT FOR HIS ACTIONS REGARDLESS OF HIS RESIDENCE - - - - - - 35

(a) That the filing of the creditors bill in cause No. 129 created an equitable levy on the entire estate of Mrs. Florence T. Holland, and the funds taken by petitioner with full knowledge thereof, were at the time of taking in gremio legis.

(b) That the doctrine of lis pendens applied to petitioner as a taker pendente lite with notice of the equities.

(c) That such taker pendente lite, with knowledge of the equities is bound by the suit; and as to land, writ of possession may be issued against him though he is not a party to the suit.

(d) That since the property taken pendente lite by the petitioner was in gremio legis in cause No. 129 the same court should decide the question concerning its transfer pendente lite, and not the court of the residence of the petitioner.

(e) The petitioner having received pendente lite, with full knowledge of the equities, part of the property then in the actual or constructive possession of the court, he, then and there for all practical purposes became bound by the suit and it was proper to bring him in as a purchaser pendente lite for the purpose of canceling his claim of title to any of the property, and making him return into court any part of the subject matter of the litigation.

Page

VII. THE DISTRICT COURT HAD JURISDICTION WITH REFERENCE TO THE PARTIES AS WELL AS THE SUBJECT MATTER IN LITIGATION AND SHOULD HAVE RETAINED THAT JURISDICTION AND NOT REFERRED THE PARTIES TO THE JURISDICTION OF THE RESIDENCE OF THE ATTORNEY OF THE DEFENDANT WHO HAD RECEIVED A PART OF THE SUBJECT MATTER IN LITIGATION PENDENTE LITE - - - - - - - - 39

VIII. REPLY TO PETITIONER'S BRIEF ON THE MERITS - - - - - - - - - - - - - 40

CONCLUSION - - - - - - - - - - - - 48

TABLE OF CASES
No. 432

	Page
Adams v. Merc. Tr. Co. 66 Fed. 620	38
Arnold v. U. S. 263 U. S. 427	30
Bessette v. W. B. Conkey Co., 194 U. S. 324	11
Boyd, Ex Parte, 105 U. S. 647	37
Buckley v. Del. Co., 2 Fed. (2) 180	35
Cabell v. Ellis, 110 U. S. 389	39
Central Tr. Co. v. Grant Locomotive Wks. 135 U. S. 207	30
Chicot Co. v. Sherwood, 148 U. S. 529	38
Childs, In Re, 89 U. S. 157	19
Christensen Engineering Co., Matter of, 194 U. S. 458	11, 26, 35
Clay v. Waters, 178 Fed. 385	26
Collins v. Miller, 252 U. S. 371	30
Conley v. Mathieson, 190 U. S. 406	28
Corpus Juris, Vol. 27, Sect. 860	37
Corpus Juris, Vol. 46, Sect. 542-45	37
Cramer v. Lamb, 48 Fed. (2) 537	23
Dillard & Coffin v. Smith, 59 S. W. 1010	37
Doyle v. London Guaranty Co., 204 U. S. 599	26
Empire Trust Co. v. Brooks, 232 Fed. 641	39
Equity Rule Twenty-nine	7, 31
Evans v. Welch, 63 Ala. 250	36
Farmers Loan Co. v. Lake St. Etc., 177 U. S. 59	39
Fayerweather v. Ritch, 195 U. S. 276	34
Freeman on Judgments, 5th Ed. Vol. 1, Sect. 519-526, Inclusive	37
Friedman v. Earle, 100 U. S. 710	37
Goldey v. Morning News, 156 U. S. 518	28

	Page
Gompers v. Bucks Stove and Range Co., 221 U. S. 418, 441-4, 448	11, 26
Grable v. Killetts, 280 Fed. 185	35
Harkin v. Brundage, 276 U. S. 36	38, 39
Hazelhurst v. The Lulu, 10 Wall. 192	37
Heidretter v. Elizabeth Oil Co., 112 U. S. 294	38
Hemingway's Code of Miss. 1927, Sect. 328	36
Hodgson v. Vroom, 266 Fed. 267	42
Henderson v. Carbondale Coal Co., 140 U. S. 25	35
Hultberg v. Anderson, 214 Fed. 349	26
Ibid, Section 35	19
Illinois Steel Co. v. Putnam, 68 Fed. 517	38
International Imp. Fund v. Greenough, 105 U. S. 527	30
Jefferson v. Driver, 117 U. S. 272	39
Judicial Code, Sect. 268	32
Julian v. Central Tr. Co., 193 U. S. 93	38
Kline v. Burke Constr. Co., 260 U. S. 226	38, 39
Klink v. Chicago, Etc. R. R. Co., 219 Fed. 462	33
Krentler-Arnold Co. v. Leman, 50 Fed. (2) 699	22
Kreplik v. Couch Patents Co. (C. C. A.), 190 Fed. 565	23
Leach v. Burr, 188 U. S. 510	35
Lienker v. Dillard, 275 Fed. 460	19
Long v. Choctaw Okla. Co., 160 Fed. 365	38
Lytle v. Town of Lansing, 147 U. S. 59	37
Lumber Co. v. Lumber Co., 85 Miss. 54	36
McLean Lumber Co. v. U. S., 237 Fed. 464	35
Marsell v. Bank, 91 U. S. 357	37
Mass. Bond Co. v. Concrete Steel Bridge Co., 37 Fed. (2) 695	35
Metcalf v. Barker, 187 U. S. 165	37, 38
Midland v. Ins. Co., 277 U. S. 346	34

	Page
Miller v. Sherry, 69 U. S. 249	36
Mohler v. Eby, 264 U. S. 32	33
Mullen v. Moline Iron Co., 131 U. S. 371	37
Nelson v. Braughler, 35 Fed. (2) 779	35
Norris, Inc. v. Wm. H. Reed & Co., 278 Fed 19	35
Orleans v. Platt, 99 U. S. 676	37
Palmer v. Texas, 212 U. S. 118	38, 39
Panama Ry. v. Johnson, 264 U. S. 375	35
Re: Ins. Corp. v. Mutual Ins. Co. (C. C. A 5) 45 Fed. (2) 593	38
Root v. Woolworth, 150 U. S. 401	29, 39
Rose's Federal Jurisdiction & Procedure, Sect 31; Page 39, 3rd Ed.	19
Rosenberg Bros. v. Curtis Brown Co. 260 U. S. 516	29
Rucksdale Sales Co. v. Starr Transmission Corp. 13 Fed. (2) 478	35
Rule Eleven C. C. A. (All Circuits)	33
Rule Twenty-five, U. S. Supreme Court	33
Shaffer v. Carter, 252 U. S. 37	28
Sandusky Tp. v. DeLevaud, 251 Fed. 633	35
Scotland v. Hill, 112 U. S. 183	37
Seattle Etc. R. R. Co. v. Union Trust Co. 79 Fed. 179	35
Sharp v. Bonham, 213 Fed. 667	38
Stewart v. Lansing, 104 U. S. 505	37
Story's Equity Pleading, Sect. 343, 10th Ed. Chap. 8	29
Story's Equity Pleading, 10th Ed. Sect. 342-343	39
Tacoma Freight, Inc. In Re: 5 Fed. (2) 752	43
Terrel v. Allison, 88 U. S. (21 Wall.) 289	38
Texas v. White, 7 Wall. 700	20

	Page
The Pesaro, 255 U. S. 216	28
Tilton v. Cofield, 93 U. S. 163	37, 39
Union Tr. Co. v. Sou. Etc. Imp. Co., 130 U. S. 565	37
United States v. Bittner, 11 Fed. (2d) 59	16
U. S. v. Pierce Oil Co., 254 U. S. 397	37
U. S. v. River Range Imp. Co., 269 U. S. 411	30
United States v. Robertson, 265 U. S. 176	29
United States v. Sanges, 144 U. S. 310	16
Wabash R. R. Co. v. Adelbert Col., 208 U. S. 38	38
Ward v. Foulkrod, 264 Fd. 627	38, 39
Walden v. Bodley, 50 U. S. (9 How.) 34	38
Warren v. Marcy, 97 U. S. 96	38
Weems v. United States, 217 U. S. 349	33
Western Loan Co. v. Butte & Boston Mining Co., 210 U. S. 368	34
Williams v. Morgan 111 U. S. 684	30
Wilson v. Rep. Iron & Steel Co., 257 U S.. 92	29
Wingert v. Kieffer, 29 Fed. (2d) 59	16
Yates v. Council, 137 Miss. 381	36

Opinion of Courts Below in This Cause

Cramer v. Lamb, 48 Fed. (2d), 537, (R. 207)
Cramer v. Lamb, Decree Dist. Court (R. 175-177)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 432

WILLIAM E. LAMB, PETITIONER

vs.

STERLING B. CRAMER, ET AL, RESPONDENTS

STATEMENT OF FACTS AND BRIEF FOR RESPONDENTS

May It Please the Court:

I.

The petition for writ of certiorari herein having heretofore been granted by this court, the case comes up as does the companion case, No. 433 on the docket of this court, for hearing on the error alleged to have been committed by the Circuit Court of Appeals.

It may be stated at the outset that this cause No. 432 and cause No. 433 on the docket of this court (United States Supreme Court) involve exact-

ly the same subject matter and parties, but different questions of law. This case No. 432 originated in supplemental proceeding in equity in cause No. 129 of the District Court of the United States in an effort to cause the restoration to the hands of the court of part of the subject matter in litigation. Cause No. 433 was an ancillary proceeding instituted in the same court for the same purpose about the same subject matter but instituted as a separate cause by the receiver, instead of joining the complainants in the supplemental proceedings in cause No. 129. The receiver having been appointed in the meantime between the date of the filing of the supplemental petition in cause No. 129 below (No. 432 here) and the date of the filing of the ancillary proceeding known as No. 162 below (No. 433 here). The causes should be argued together and heard by this court at the same time.

II.

Statement of Facts

In an equity case (No. 129) pending in the district court of the United States, wherein was sought to be set aside certain fraudulent conveyances, and wherein a lien, both by statutes of the state and rules of decision was claimed, and finally imposed, by decree therein on said property involved in said suit, a supplemental petition was filed April 21, 1930 (R. Pages 122-127) as against petitioner here, and others, alleging the transfer pendente lite, to petitioner, of a part of the subject matter of the litigation therein; and alleging that petitioner and others (a) were in contempt of court for such

transfers (R. Page 125); (b) that they should be made to account for the funds (R. Page 126) and that such transfers should be set aside and full relief given to the plaintiffs. On the said supplemental petition an order was entered on April 21, 1930 (R. Pages 128-130) in the original equity suit No. 129 making petitioner and others parties defendant to the suit (R. Page 130) for all purposes and especially (a) for setting aside such conveyances, and (b) to show cause why petitioner and others should not be held in contempt.

Service of a copy of the order was required therein and made on petitioner April 21, 1930 (R. Pages 128-31). Thereupon on April 22, 1930, an order was entered by *consent* enjoining further transfers by the defendant, or her *attorneys*, (one of whom was petitioner) (R. Page 127). A final decree was then entered in the main proceeding April 30, 1930 (R. Page 127-146) settling and determining the main controversy but reserving the supplemental petition and other matters for hearing (R. Page 134. Also Record Page 138, Paragraph XVI). The injunction as against further transfers by defendant or her attorneys (petitioner) was made perpetual (R. Page 138) and since hearing was reserved on the supplemental proceeding, it was provided in the decree,

> "Wm. E. Lamb, or Butler, Lamb, Foster & Pope not to be prejudiced hereby" (R. Page 146).

At the same time and on the same date as of the entry of the decree, April 30, 1931, the hearing

on the supplemental petition was by consent set for June 9, 1930 (R. Page 146) at Biloxi, Mississippi. Thereupon, petitioner on May 19, 1930 (R. Pages 147-172) filed in the district court in cause No. 129 a full and complete answer to the charges made against him in the supplemental petition, and treated the supplementary petition as (a) petition to set aside fraudulent conveyances, and (b) order to show cause as for contempt, answering both phases (R. Page 167) and praying complete exoneration. The said answer was filed by petitioner personally.

The supplementary petition and answer (for reasons not mentioned in the record) did not come on for hearing at Biloxi, Mississippi, on June 9, 1930, but in the meantime on April 30, 1930, the auxiliary or ancillary bill in cause No. 162 was filed.

At a later date, more than two months after filing his answer, to-wit, on July 22, 1930, the petitioner

> "*Appeared specially* for the sole purpose of moving the court to quash the citation aforesaid, and to dismiss the petition aforesaid, and for no other purpose on the ground that the court was, and is without jurisdiction (R. 173-175).

In spite of the general appearance of the petitioner and his plea for exonoration and general relief (R. Pages 147-172) the district court, in cham-

bers, heard the "Motion to Quash the Citation" and by decree (R. Pages 175-177) without evidence of any kind before it, and only on the motion to quash, ordered (R. Page 176):

> "That the said motion of the said Wm. E. Lamb to quash the process and dismiss the petition for the citation of Wm. E. Lamb for contempt, and for an order to turn over money paid him by the defendant, be and the same is hereby sustained, and the rule to show cause is hereby discharged, and the said petition is hereby dismissed, without prejudice to the rights of the plaintiffs, the receiver, or any interested party, to proceed civilly in the matter as they or any of them may be advised; and the said Wm. E. Lamb is dismissed hence without day, and all costs of this proceeding to be taxed by the Clerk are taxed upon the plaintiffs herein, judgment for said costs when so taxed is hereby entered against plaintiffs, for which let execution issue as at law."

The said quashal being made on the sole ground that petitioner, a non-resident attorney attending court in a foreign jurisdiction was privileged from service. See objections to the incorporation in the transcript of the record on appeal to certain portions of the record. (R. Page 192) where the attorneys for the respondents presented to the judge of the lower court said objections, and it was therein stated that the sole question on appeal as presented to the Circuit Court of Appeals, and as presented to the

Honorable E. R. Holmes, judge of the lower court was and is:

> "Was Wm. E. Lamb, at the time of the service of the writ upon him in this cause, a non-resident attorney attending court in a foreign jurisdiction and hence not subject to the service of subpoena, or other writ in the District Court of the United States for the Delta Division of the Northern District of Mississippi?"

This was passed on by the court by order excluding from the record certain matters sought to be included by the praecipe of petitioner here, appellee there. (See order of the court R. Pages 194-196, inclusive).

Plaintiffs in the district court then appealed the case to the Circuit Court of Appeals for the Fifth Circuit where the case appeared as No. 6004. The errors assigned on appeal were to the effect that the court erred in dismissing the petition and citation as against Lamb because the proceedings were supplementary in cause No. 129 and the order of court and copy of the petition served on Lamb and his answer thereto were sufficient to give the court jurisdiction for the purpose of hearing the merits and restoring the subject matter of the litigation if justice demanded. The errors assigned appear at R. Pages 179-180. In the Circuit Court of Appeals the petitioner here moved to dismiss the appeal because (a) the order appealed from was a judgment in criminal contempt in favor of appellee; (b) was an order entered in a civil case which was not final,

and, therefore, not appealable. The case was heard by the Circuit Court of Appeals on the motion to dismiss and on the merits at the same time. Thereupon the Circuit Court of Appeals reversed the lower court. Judge Dawkins' opinion for the Circuit Court of Appeals appears at R. Pages 207-209, and decree of the Circuit Court of Appeals at R. Page 209. By reference to the opinion of Judge Dawkins (R. Pages 207-209) it will be seen that the Circuit Court of Appeals ruled squarely on the assignment of errors presented by the appellant, viz: that the ancillary petition and order served on him of a copy of said order, and his answer seeking exoneration were sufficient to give the district court jurisdiction of petitioner and to inquire into the equities in cause No. 129, and that the district court should not have dismissed the petition and quashed the citation as well as dismissed without day, the petitioner on the "Motion to Quash the Citation."

ARGUMENT

In the Circuit Court of Appeals the petitioner contended that his "Motion to Quash the Citation" (R. Pages 173-175) was a motion to dismiss, under *Equity Rule Twenty-nine*, which supplants a demurrer and not a motion to "Quash the *Service* of Citation." But whether the said motion to quash the citation be taken as a motion to quash the citation or a motion to quash the *service* of citation it can make no difference in the error of the district court in dismissing the petitioner without day. His appearance in the court (1) by allowing the restraining order (R. Page 127) to be entered by consent

against the defendant and petitioner as her attorney; (2) the entry in the decree in the original cause, to which he was then a party, of the reservation, "Wm. E. Lamb, or Butler, Lamb, Foster & Pope not to be prejudiced hereby" (R. Page 146); (3) his answer seeking complete exoneration (R. Page 147-172); (4) his agreement in person to continue the hearing on the citation to June 9, 1930 (R. Pages 146-147) were sufficient to enter his general appearance in the original cause in equity, No. 129. The filing by him thereafter of his "Motion to Quash the Citation" whether it be considered in the nature of a demurrer or otherwise, could not justify the district court in dismissing him entirely from the case in view of the charges contained in the supplementary petition.

Since we have not received any brief on the merits in this cause we must refer to the errors alleged to have been committed in the Circuit Court of Appeals as set forth in the petition for the writ. In the brief in support of the petition for writ of certiorari Paragraph IV, Page 8, counsel for the petitioner states:

> "The errors intended to be urged are those specified under heading B in the petition and for the sake of brevity will not be repeated."

Turning to heading B in the "Petition for the Writ of Certiorari and Brief in Support Thereof" Page 4, we find five errors alleged under the heading "Reasons Relied Upon for the Allowance of the Writ." For the sake of brevity we will not repeat in full the errors but summarize them as follows:

1. The Circuit Court of Appeals had no jurisdiction of the appeals because the judgment appealed from was a judgment for the defendant in a criminal contempt case.

2. The Circuit Court of Appeals erred in treating the decree of the district court as an order which merely quashed *service* of the citation.

3. The Circuit Court of Appeals had no jurisdiction because no appeal was taken from the final decree in the main proceedings.

4. The Circuit Court of Appeals erred in taking jurisdiction of the Appeal.

5. The Circuit Court of Appeals erred in reversing the judgment appealed from.

The errors above alleged Nos. 4 and 5 we have repeated in full as alleged by the petitioner in his petition, but since they are not specifications of error specific enough to challenge the attention of either court or counsel we take it that the only real errors urged in good faith to have been committed by the Circuit Court of Appeals are those numbered 1, 2 and 3.

We shall, therefore, in our legal argument take up the argument of errors alleged in specifications Nos. 1, 2 and 3 above in the order in which they are set forth and then proceed therein to the citation of legal authorities sustaining generally the decree of the Circuit Court of Appeals reversing the district court.

proceedings are void because it is an effort to join a criminal contempt proceeding with a civil supplementary proceeding seeking the restoration of subject matter of litigation, and void for the reason of said misjoinder.

Counsel for the respondent have taken the position in the courts below, and now take the position (1) that the supplementary proceedings in cause No. 129 below while they charge contemptuous conduct were really supplementary proceedings to compel restoration of the subject matter in litigation, and (2) that the appearance in the manner and form as stated of the petitioner in the cause in which he was already an attorney so fixed his status therein as that the district court erred in dismissing *him* entirely on his "Motion to Quash the Citation." That if the district court had thought that the petitioner was either not guilty of contempt of the court, or that the court had no power or jurisdiction to punish him for contemptuous conduct, that, nevertheless, it should not have dismissed him entirely from the case but should have retained him on his answer to the supplementary proceedings.

Counsel for the petitioner has insisted and now insists that the supplementary petition in this cause is purely and simply a criminal contempt proceeding and for that reason final and not appealable from the decree of the district court dismissing the petitioner. But if mistaken in that he says the whole

LEGAL ARGUMENT AND CITATION OF AUTHORITIES

I.

The Decree of the District Court Appealed from was not Rendered in a Criminal Contempt Case.

In order to show that the decree of the district court which was appealed to the Circuit Court of Appeals was appealed from a decree in a criminal contempt case, counsel cites the following cases: (Petition for writ of certiorari and brief in support thereof, Page 5)

Bessette v. W. B. Conkey, 194 U. S. 324

Matter of Christensen Engineering Co. 194 U. S. 458

Gompers v. Bucks Stove and Range Co. 221 U. S. 418, 441-4, 448.

The *Bessette v. Conkey* case, *supra,* is not in any way in point, because (1) the case was plainly one in criminal contempt in which the defendant Bessette was found guilty and sentenced to pay a fine; (2) because Bessette had not been made a party to the original cause; (3) the proceedings were independent and separate from the original suit. None of these facts apply to the instant case, nor does any statement of the law made therein contravene the law as stated in the decision of the Circuit Court of Appeals in the instant case.

In the *Christensen Engineering Co.* case, *supra,* the court said:

> "In the present case, however, the fine payable to the United States was clearly punitive, and in vindication of the authority of the court, and we think as such it dominates the proceedings and fixes its character."

It will be noticed in the Christensen case that there were two aspects to the proceedings, one criminal, the other civil and no error was alleged to have been committed on that ground.

The *Gompers* case *supra*, was a case in which criminal contempt was not charged in the petition but imposed by the court and was appealed at the instance of the convicted defendant. Again it appears that this court, through Justice Lamar, recognizes that an ancillary petition may partake both of the nature of criminal and civil contempt and the court holds that (See Page 449, 221 U. S.):

> "On the other hand, if it had prayed that the court impose a fine payable to the Bucks Stove and Range Company, the language would have left no doubt that remedial punishment was sought. It is not different, in principle, if instead of praying specifically for a fine payable to itself, it asks generally for 'such relief as the nature of its case may require'. In either event such a prayer was appropriate to a civil proceeding, and *under it the court could have granted that form of relief to which the petitioner was entitled.*"

The petition in the instant case (R. Pages 122-126) while it alleged that the petitioner was guilty of contumacious conduct only prayed as follows:

"Therefore, and for the further purpose if the same shall appear necessary of cancelling and setting aside the various alleged covenous, fraudulent and nefarious transfers aforesaid, that this Honorable Court, for the purpose of carrying out and effectuating such decrees as this Honorable Court may render in the main cause herein, that each, all and every of above mentioned parties, and other parties who may appear to be concerned in the said transfer, be made parties to this cause, by proper process returnable as required by law, and that upon final hearing hereof your Honor grant to the plaintiffs full and complete general relief herein as to equity may seem meet, but that in the meantime your Honor may issue herein such temporary restraining order as may appear necessary to prevent the further transfer by gift, or otherwise, of the corpus of the estate herein sued for, and that such temporary restraining order be supplemented by writs of injunction to be granted hereinafter, permanently and wholly restraining and enjoining all persons from further transferring and disposing of the property sued for, and/or involved in this litigation." (R. Page 126).

Justice Lamar in the *Gompers v. Bucks Stove & Range Co.* case, *supra*, while distinguishing the differences between civil and criminal contempt, says at *Page 448* of *221 U. S.*:

"Bearing these distinctions in mind, the prayer of the petition is *significant* and *determinative.*"

Counsel for the respondent has caused the brief of associate counsel, Mr. Cook, in the Circuit Court of Appeals, to be printed in the record (Pages 199-206) on the ground, we suppose, that it was stated in the brief by Mr. Cook:

> "It would avail us nothing to enter into a moot debate with counsel as to the propriety of that proceeding in as much as there is no error assigned by the appellant upon the action of the court below in dismissing the contempt charge."

Certainly the brief of one counsel in the Circuit Court of Appeals unless taken in connection with all the other briefs could not be determinative of the issues involved here. We think, however, that associate counsel meant by this assertion that the matter of criminal contempt as against the petitioner was not intended to be urged either in the district court or in the Circuit Court of Appeals, but that the sole matter in issue was the question of restoration to the court of the subject matter of the litigation.

Upon the filing of the pleadings quoted from above the court entered an order (R. Pages 128-131) whereby the appellee was formally made a party to the suit in the court below which provided that the parties should appear before the court:

> "And show cause why they should not be adjudged to be in contempt of this court, and further they they should show cause why they should not be adjudged to hold all of the property under the control of the court, and that said transfers be set aside." (R. Pages 129-130).

To the service of the above citation (Being copy of the decree served on him) the petitioner answered fully seeking exoneration. (R. Page 147). Also after the service upon him of the copy of the said decree the petitioner, while having been made a party by the said decree, agreed in open court to the entry of the restraining order (R. Page 127). Said restraining order was made perpetual by decree (R. Page 138) and hearing of petition reserved (R. Page 138, Par. XVI. Also R. 134) and further agreed in open court to the entry of the order (R. Pages 146-147) continuing the hearing on the citation until June 9, 1930, at Biloxi, Mississippi. It was only an afterthought that the "Motion to Quash the Citation" was filed more than two months later, and hearing on that alone set and heard by the court.

In view of the fact that petitioner was present in the court when the final decree in the original cause was entered , (R. Pages 131-146, inclusive) and at his request, through the courtesy of counsel, the following was entered in the original decree:

> "Wm. E. Lamb, or Butler, Lamb, Foster & Pope not to be prejudiced hereby."

we insist that he recognized that he was a party to the cause.

Reviewing the above pleadings and the actions of the parties therein we do not see that it can be successfully contended that this case was one alone for contempt, or that it partook of the nature of criminal contempt.

Counsel cites three cases on the proposition that the Circuit Court of Appeals had no jurisdic-

tion to reverse the judgment in this case (Petition for Writ of Certiorari and Brief in Support Thereof, Page 5) to-wit:

United States v. Bittner, 11 Fed. (2) 59

Wingert v. Kieffer, 29 Fed. (2d) 59

United States v. Sanges, 144 U. S. 310.

We have referred to each of these cases and find that they are each and all cases of an appeal in a criminal contempt case and have nothing in common with the instant case.

In the *Bittner* case, *supra*, 11 Fed. (2) 95, the court said:

> "In these cases the writs of error were sued out on a judgment in a criminal contempt proceeding."

In the *Wingert* case, *supra*, 29 Fed. (2) 60 in summing up the case, the court said:

> "It was, therefore, a proceeding in criminal contempt."

In the *Sanges* case, *supra*, 144 U. S. 310 the United states sought an appeal from a decision of the district court sustaining a demurrer quashing an indictment.

We respectfully submit, with due deference, that none of the cases cited have any application to the instant case. In no sense of the word can it be said that the appeal to the Circuit Court of Appeals was an appeal from a decision of the district court in a criminal contempt charge.

II.

Joining Allegations of Contemptuous Conduct with Prayer for Civil Relief Does Not Invalidate Whole Supplemental Proceedings.

Counsel for the petitioner, before the Circuit Court of Appeals, took the position that the fact that the petition in the lower court (R. Pages 122-127, inclusive) accuses the petitioner of contemptuous conduct towards the court, and in the same petition requests that the transfers made to him pendente lite be canceled and set aside, was a complete misjoinder of causes and rendered the whole proceeding void.

We have not regarded the supplemental petition, nor the citation issued thereon in any respect in the nature of a criminal contempt, especially as against the petitioner, and we refer the court to that petition (R. Pages 122-126, inclusive). The preamble of the petition (R. Page 122) states that the defendant Florence T. Holland and her agent, W. P. Holland:

> "Have during the pendency of this litigation and utterly disregarding the rights and privileges of the plaintiffs, and the equities in this cause, and the dignity, power, and authority of this honorable court, and in contumacious and contemptuous disregard thereof, have, in order to further hinder and delay the creditors of said W. P. Holland done the following acts."

The petitioner Wm. E. Lamb was not mentioned there in the preamble, nor is his name mentioned until in Paragraph 4 (R. Page 124) it is alleged that the Hollands, conspiring with Lamb, had paid to him

approximately $90,000.00 of the subject matter of the litigation. (R. Page 125). The prayer of the petition (R. Page 126) did not contemplate the conviction of the petitioner of a criminal contempt, but did contemplate the issuing of an order to show cause why the equities should not be preserved and why he should not be held in contempt of the court for his actions in the premises. If it be taken that the charge of contempt was a criminal one in spite of the careful distinction made by Justice Lamar in the *Gompers v. Buck Stove & Range Company* case, we still say that the joining of the two would not render the whole proceedings void, and if the district court had considered that the proceedings smacked of a criminal contempt, he was still in error in quashing the entire proceedings and dismissing the petitioner without day, but with his costs.

Under the heading "Criminal and Civil Contempt" Mr. Rose in his Federal Jurisdiction and Procedure, says:

> "In point of fact, however, that of which complaint is made may have a double aspect, one civil, the other criminal. The individual complained of may have done something which has been expressly or impliedly forbidden and that which he has done may have caused pecuniary injury to a party to the cause. He had made himself criminally liable to the public and civilly answerable to the one hurt. Proceedings may be taken against him for either or for both, and if the latter be the course actually adopted, he may be punished for a criminal contempt and com-

pelled to make pecuniary redress to the one injured, for the same act in its civil aspect. Where the prosecution may in form have been for the criminal contempt, and while the punishment inflicted upon him may have been in whole or in part called a fine, the latter may be awarded altogether to the party or parties injured, or to the United States, or apportioned between, or among them as the Court may think just."

Rose's Federal Jurisdiction & Procedure
Section 31, Page 39, Third Edition
Section 35. Ibid.
Lienker v. Dillard, 275 Fed. 460

Justice Lamar, in the *Gompers* case, *supra*, at Pages 441-451 of *221 U. S.* goes carefully into the distinction between civil and criminal contempt, recognizes the close analogy between the two, holds that the prayer in the petition is determinative, and reverses the case (1) because a criminal sentence of from six to twelve months had been passed upon the defendants, respectively, on a petition in a civil proceeding and a citation issued thereon; and (2) he did not consider the matter in its civil aspect because as stated by him the Supreme Court of the United States was informed that the civil matters had been entirely settled to the satisfaction of all parties.

The only case cited in the Circuit Court of Appeals by counsel for the petitioner as an authority that civil and criminal proceedings could not be joined in the same petition, or citation thereon, was the following case:

In Re: Childs, 89 U. S. 157

Upon an examination of that case it is found that the case originated in the Supreme Court of the United States under the style, *Texas v. White, 7 Wall 700.* Chief Justice Chase delivered the opinion of the court and the decree of the court is found at the end of the case, *Page 742* et seq of *7 Wall.* In the decree it is provided:

> "And it is further ordered, adjudged, and decreed, that the complainants, or the defendants, respectively, be at liberty to apply to the court at the foot of this decree for further directions in respect to the execution of the same, if they shall be so advised."

A good many years thereafter it appears that John Childs, who was a party to the said cause of *Texas v. White* wrote certain letters to English bankers notifying them that he still claimed to be the owner of certain of the Texas Indemnity Bonds decreed by the court to belong to the State of Texas. Conceiving that this was a violation of the injunction expressed in the decree the State of Texas filed a petition with the Supreme Court of the United States in the original cause charging violation of the injunction. The petition is not set out in the opinion, but it appears that the petition requested that the said Childs be cited for contempt and punished and also asked, that he might be ordered by a proper instrument in writing to convey and transfer to the State of Texas all right, title, and interest which he appeared or pretended to have in said bonds, and counsel in the oral argument before the Supreme

Court stated that Mr. Childs should be imprisoned for contempt until he complied with the order.

The Supreme Court, through Justice Miller, answered this contention that no such order or decree had been made (ordering Childs to transfer said bonds) and that, therefore, Childs could not be guilty of contempt until the order had been made. The defendant Childs was fined $250.00 and costs of the proceedings. Justice Miller did not make the order commanding Childs to transfer by proper instrument in writing any right, or title, or interest which he pretended to have in said bonds, but said:

> "It is true that the original decree contains a provision for further direction in the enforcement of it, and it may be that such an order as is asked for now would be made on proper application and proper notice to the parties concerned. but such a proceeding can constitute no part of a proceeding for contempt in disregarding an existing order of the court. The granting or refusal of such an order is governed by very different considerations and is to be brought to the attention of the court by very different proceedings than such as belongs to the one now before us."

Not by any means holding thereby that the proceedings were void in any way, but holding that the proceedings appeared to be a criminal proceeding for the violation of an existing order of the court, for which the defendant was fined $250.00 and costs, and that the proceeding to compel the transfer of the property should, under the circumstances, be brought

to the attention of the court by another proceeding. This was proper, of course, since the case was long closed and this was a reopening thereof and it does not appear what answer, if any, Childs made to the supplementary petition or citation.

We insist there was no criminal contempt proceedings in the instant case, but the following cases demonstrate that such a joinder does not, by any means, invalidate the whole proceedings:

> "The contempt proceedings, filed in the equity case, were entitled as of that case, and, while they asked for punitive as well as remedial relief, the proceedings were treated by counsel for the respective parties and by the court as only asking for remedial relief. In other words, the allegations and prayer for punitive relief were disregarded and treated as surplusage. And the court, in its final decree, awarded nothing in the way of a penalty, but only by way of remedial relief. The contempt proceedings, therefore, are to be regarded and treated as proceedings in civil contempt, for such was the mutual understanding of the parties throughout the trial. Kreplik v. Couch Patents Co. (C. C. A.) 190 F. 565; Mitchell v. Dexter (C. C. A.) 244 F. 926."

Krentler-Arnold Co. v. Leman, 50 Fed. (2) 699

> "For the reason stated in cause No. 6072 this day decided, we think the funds were in the constructive possession of the court to the knowledge of Lamb and his client, and that plaintiffs

were at liberty to proceed by bill in equity, or by rule for contempt, or by both means, to compel their restoration to the custody of the court's officers."

Cramer v. Lamb, 48 Fed. (2) 537

In the case of

Kreplik v. Couch Patents Company, (C. C. A.) 190 Fed. 565 the exact question with regard to the joinder of proceedings for general relief and criminal contempt is discussed and passed upon by the Circuit Court of Appeals of the 1st Circuit.

It is not for a moment contemplated that we agree with counsel that there is in this case the joinder of any criminal contempt with a request for civil relief. On the contrary we think the pleadings, and the attitude of counsel and the court, show criminal contempt was never contemplated in the action.

III.

No Appeal was Necessasry from Final Decree in Main Proceedings in Cause No. 129. The Decree of the District Court in the Supplemental Proceedings was a Final Decree and Appealable.

Under Specifications of Error No. 3, Page 5 of the Petition for Writ of Certiorari and Brief in Support thereof, it is alleged that the Circuit Court of Appeals had no jurisdiction to reverse the district court because no appeal was taken from the final decree in the case. It is alleged on Page 12 thereof:

"In this case the principal case was terminated by consent decree after the contempt proceeding was instituted. That consent decree expressly provided that it should be without prejudice to petitioner and no appeal was taken from it."

In the first place we take issue with counsel and state the facts to be, as shown by the record:

The supplementary petition was filed before the final decree, to-wit: On April 21, 1930, (R. Page 129) the final decree being entered on April 30, 1930. (R. Page 146). On the same day of the entry of the final decree and after its entry the petitioner appeared in person and by agreement set the hearing of the citation and the petition for June 9, 1930, at Biloxi, Mississippi. (R. Pages 146-7). In addition the decree itself provided for the contingency of the hearing of the matter of the liability of the petitioner in the following portions thereof, to-wit:

"The court hereby reserves to itself full jurisdiction of this cause to make such other and further orders as it may deem proper and as equity may require, both as to increasing the amount of the estate, and/or increasing the amount due and owing to any party plaintiff, and/or uncovering additional property and disposing of any adverse claims that may be interposed as against any portion of said estate." (Record Page 134).

And again:

"This court reserves full jurisdiction of the causes to make any other and further orders

which may be found from time to time essential for the creation, preservation and/or disposition of the relative rights of the several parties hereto, or any claimants of any portion of the estate now or hereafter created." (R. Page 138).

Then and there in open court, and recognizing that he was a party to that cause at that time, petitioner caused to be entered in the decree the further provision:

"Wm. E. Lamb, or Butler, Lamb, Foster & Pope not to be prejudiced hereby," (R. Page 134.)

That the petitioner should afterwards, upon the employment of other counsel, file a motion to quash the citation setting up that the case had been fully and finally settled is indeed strange under the circumstances. In view of the above situation it will be seen by the court that this supplementary proceeding is separate and apart from the main proceeding and to be heard by itself alone. There are only the complainants and the petitioner here interested in the result. Certainly counsel for the petitioner would not have this court believe that he seriously contends that in a supplementary proceeding to effectuate a final decree already rendered, where the defendant to the supplementary proceeding has been discharged, the petition dismissed, and the writ quashed, that no appeal will lie unless the complainants desire to appeal from the final decree in the original cause with which they are perfectly satisfied and upon which the supplementary proceeding is brought to

enforce and to add to the estate. Such a contention is so wholly without merit that we are tempted to disregard it entirely but out of deference will refer to the cases cited by counsel for the petitioner and demonstrate their inapplicability.

Counsel cites as authority for lack of jurisdiction of the Circuit Court of Appeals of the appeal from the district court because (a) of the settlement of the case, and (b) the interlocutory nature of the decree, the following cases:

Gompers v. Bucks Stove & Range Co.
221 U. S. 418

Doyle v. London Guaranty Co.
204 U. S. 599

Matter of Christensen Engineering Co.
194 U. S. 458

Hultberg v. Anderson, 214 Fed. 349

Clay v. Waters, 178 Fed. 385

By reference to the *Gompers* case, *221 U. S. 418*, it will be seen that (1) the decree in the lower court is not set out and does not show whether the court reserved to itself the powers as in the instant decree or not, and (2) it was admitted in open court by all the parties that the civil matters had been settled finally and fully.

In the case of *Doyle v. London, etc. Co. 204 U. S. 599* the defendants were, by rule to show cause, ordered during the progress of the case, to produce certain books and papers, and for failure so to do, were

ordered to pay a fine of $250.00 and costs, or to suffer imprisonment in jail for sixty days. A writ of error was taken to the Circuit Court of Appeals and the question certified from there to the Supreme Court of the United States as to whether or not the Circuit Court of Appeals had jurisdiction to review the judgment of the district court. This court answered the question in the negative, because the judgment of contempt having been made in the progress of a civil case and the case not having reached a final conclusion, appeal did not lie, since the judgment in contempt was interlocutory. We shall not enter into an argument here with reference to the various decisions of the Supreme Court of the United States holding that a judgment in contempt proceedings of the nature set forth in the *Doyle* case is interlocutory because it is said that the person condemned "carries the keys of the jail in his own pocket" in that at any time he obeys the order of the court he is released. Suffice it to say that although the decree in the *Doyle* case is interlocutory there is no similarity either of facts or of law to the case at bar.

The *Christensen Engineering Company* case. *194 U. S. 458* was decided on an entirely different principle. The court held in that case that the proceedings were criminal proceedings "in vindication of the authority of the court, and dominated the proceedings", and held that the Circuit Court of Appeals should have taken jurisdiction of the appeal.

The Hutlberg-Anderson case, *214 Fed. 349* was an appeal by Hultberg, complainant in a creditors bill, from a decision of the district court rendered in the progress of the hearing where a master, or exam-

iner, certified to the district court the refusal of a witness to answer certain questions. The district court entered a rule to show cause against the witness. The witness still refused to answer on the grounds (a) that of privilege as attorney, and (b) immateriality of the questions. A hearing was had before the district judge and the recalcitrant witness was discharged at the cost of petitioner. The petitioner took an appeal to the Circuit Court of Appeals which was dismissed because the order entered was interlocutory, the case not having come to a final conclusion.

The *Hultberg* case is not in point for the reason that (a) the contempt proceedings were criminal, and (b) entered during the progress of a case but not quashing any writ or dismissing any defendant to a civil controversy which sought to enforce a decree.

The Clay v. Waters case, *178 Fed. 385* also is not in point because (a) a criminal contempt was involved, and (b) there was no dismissal of any defendant personally from civil proceedings and (c) was reviewed by the Circuit Court of Appeals.

That this case as appealed to the Circuit Court of Appeals was a final decision of the district court dismissing Wm. E. Lamb without day is evidenced from the following decisions:

Goldey v. Morning News, 156 U. S. 518

Conley v. Mathieson 190 U. S. 406

Shaeffer v. Carter, 252 U. S. 37

The Pesaro, 255 U. S. 216

Wilson v. Rep. Iron & Steel Co. 257 U. S. 92

Rosenberg Bros. v. Curtis Brown Co. 260 U. S. 516

United States v. Robertson, 265 U. S. 176

As said by this court in the case of

Root v. Woolworth, 150 U. S. 401

> "A supplemental bill may also be filed as well after as before a decree, and the bill, if after the decree, may be either in aid of the decree that it may be fully carried into execution, or that proper directions may be given upon some matter omitted in the original bill, or not put in issue by it, or by the defense made to it, or to bring forward parties before the court, or it may be used to impeach the decree.

Such a bill may be brought by or against any person claiming as assignee of a party to the decree.

Story's Equitable Pleading, Section 343, 10th Edition, Chapter 8.

Final decree having been entered in this cause reserving to the district court the jurisdiction as stated hereinbefore, there was nothing left to appeal from on a final decree but only the supplemental matter in aid of the final decree which had been especially reserved for decision, to-wit: the possession in the petitioner of a part of the subject matter of the litigation, and since he was *personally* dismissed by the court with his costs and *without day* and the supplemental petition against him dismissed as well as the citation

quashed, there was nothing left except an appeal to the Circuit Court of Appeals.

> "An adjudication, final in its nature, of matters distinct from the general subject of the litigation, such as a claim to property, is treated as final and subject to review without regard to the termination or not of the litigation in the main cause."
>
> *Central Trust Co. v. Grant Locomotive Works, 135 U. S. 207*
>
> *Williams v. Morgan, 111 U. S. 684*
>
> *Collins v. Miller, 252 U. S. 371*
>
> *International Imp. Fund v. Greenough, 105 U. S. 527*
>
> *Collins v. Miller, 252 U. S. 366*
>
> *Arnold v. U. S. 263 U. S. 427*
>
> *U. S. v. River Range Imp. Co. 269 U. S. 411*

IV.

The Circuit Court of Appeals Reversed the District Court on Errors Patent in the Record Properly Assigned. Circuit Court of Appeals May, However, Reverse Any Case for Error Patent on the Record Though Not Properly Assigned.

By Paragraph 2 in his specification of errors (Page 5 of Petition for Writ of Certiorari and Brief in Support Thereof) counsel for the petitioner alleges that the Circuit Court of Appeals, although it might, on some grounds, reverse the judgment ap-

pealed from, could not do so by treating it as an order which merely quashed service of the citation.

The argument in regard to whether the decree of the district court in this cause (R. Pages 175-177) was one quashing service of process or was one quashing the process, is occasioned by the fact that the motion which was before the district court (R. Pages 173-175) is, with due deference, inartificially drawn. It is a mongrel pleading. It is neither fish nor fowl. If, as counsel now contends, the pleading is one under *Equity Rule Twenty-nine* to dismiss the supplemental petition, neither counsel for the petitioner, or the respondent in the lower court, nor the lower court, nor the Circuit Court of Appeals so regarded it.

In the first place the following language is used in the preamble of the pleading:

> "Does hereby, by his attorney, W. Calvin Wells, *appear specially* for the sole purpose of moving the court to quash the citation aforesaid, and to dismiss the petition aforesaid, and for no other purpose, on the ground that the court was and is without jurisdiction therein for the following reasons."

One cannot appear specially and file a motion to dismiss which is equivalent to a demurrer. Such an appearance is general. In the second place the grounds of the petition are such as leave the court and counsel in doubt as to what is actually attempted by the pleading. To illustrate: Grounds 1, 2, 14 and 16 are directed to the jurisdiction of the court over

the subject matter and the parties in the original cause; grounds 3, 4 and 12 are directed to the legality of the citation; grounds 5 and 6 are directed to the right of the court to proceed in a criminal contempt under *Section 268* of the *Judicial Code*. Grounds 7, 8, 9, 10 and 11 are directed to the sufficiency of the petition and citation; ground 13 to the effect that a final decree had been entered in the original cause; ground 15 to the privilege or exemption of Wm. E. Lamb from service of citation.

That the district court thought that this motion was a motion to quash the service is evidenced by the decree (R. Page 176) dismissing Wm. E. Lamb personally in the following language:

> "And the said Wm. E. Lamb is dismissed hence without day."

and by the further fact that the court quashed the citation as well as dismissed the petition.

On a motion to dismiss the district court would only have decreed a dismissal of the petition whereupon the complainants therein would have had the right to have amended, but instead of doing this the court quashed the citation, dismissed the petition and dismissed the petitioner personally, leaving the complainants without any right whatever to amend their pleading, as the petitioner was then out of court finally and for good. (We will take this point up again under the heading with regard to the finality of the decision of the district court.)

On Pages 10 and 11 of the Petition for Writ of Certiorari and Brief in Support Thereof, counsel for the petitioner alleges that there was no assignment

of error in the Circuit Court of Appeals covering the action of the district court in *quashing the citation* and dismissing the petition, but that the only error assigned was to the action of the district court in *quashing the service of process*, and that, therefore the Circuit Court of Appeals could not take up any error even if one was committed by the district court which was not assigned. That this is not the rule on appeal we cite the following cases:

Rule No. 11 of the Circuit Court of Appeals for all circuits.

Rule No. 25, United States Supreme Court.

Weems v. United States, 217 U. S. 349

Mohler v. Eby, 264 U. S. 32

"Whatever may be the rule in ordinary cases, we think that in a case where the court has rendered judgment upon the pleading, for either party, on assignment of error stating generally that the court erred in rendering the judgment upon the pleading, is sufficient as it directs the attention of this court directly to the point to be considered."

Klink v. Chicago, etc. R. R. Co. 219 Fed. 462

However, we think that the assignment of errors in the district court (R. Pages 179-180) though it may be inartificially drawn is certainly sufficient to call the attention of the district court as well as the Circuit Court of Appeals to the exact point in issue, and the exact error assigned, to-wit: That since the

petitioner had been made a party to the cause and he had duly answered and as the record showed had consented to a continuance of the cause, that he should not have been dismissed personally without day by the district court on a so-called "Motion to Quash," reference to which, and each of its grounds was then made. (R. Page 180). If counsel for the respondent was in doubt as to what to call the motion of petitioner and simply referred to it in the assignment of errors as "Motion to Quash the Service of Process, filed herein on the ___ day of___, 1930, for the causes set out in said motion to quash" the Circuit Court of Appeals is not barred from examining the error attempted to be alleged whether properly alleged or not.

The two cases of,

Fayerweather v. Ritch, 195 U. S. 276
Midland v. Ins. Co., 277 U. S. 346

present entirely different situations from the one here involved. In neither of those cases was the assignment of error in question, but it appeared that the record itself did not contain sufficient pleading or evidence upon which to base the theory of reversal as stated by the Circuit Court of Appeals.

V.

By His Answer in the District Court (R. Pages 147-177) Petitioner Submitted Himself to the Jurisdiction of that Court and Waived any Questions as to the Jurisdiction of that Court over His Person and Could Not Thereafter Set Up By Motion to Quash Process any Defense to the Jurisdiction.

Western Loan Co. v. Butte & Boston Mining Co., 210 U. S. 368

Mass. Bond Co. v. Concrete Steel Bridge Co., 37 Fed. (2) 695

Nelson v. Braughler, 35 Fed. (2) 779

Buckley v. Del. Co. 2 Fed. (2) 180

Sandusky Tp. v. DeLavaud, 251 Fed. 633

McLean Lumber Co. v. U. S. 237 Fed. 464

Panama Ry. v. Johnson, 264 U. S. 375

Grable v. Killetts, 280 Fed. 185

Norris, Inc. v. Wm. H. Reed & Co., 278 Fed. 19

Henderson v. Carbondale Coal Co. 140 U. S. 25

Christensen Engineering Co. Matter of, 194 U. S. 458

Rucksdale Sales Co. v. Starr Transmission Corporation, 13 Fed. (2) 478

Leach v. Burr, 188 U. S. 510

Seattle, Etc. R. R. Co. v. Union Trust Co. 79 Fed. 179.

VI.

Having Received, with full Knowledge of the Equities, a Part of the Subject Matter of the Litigation, Pendente Lite, the Petitioner, Attorney for the Defendant, was (a) Bound by the Result of the Litigation: and/or (b) Subject to Answer to the Court for His Actions Regardless of His Residence.

It was strenuously contended by counsel in the district court that the petitioner was not subject to the jurisdiction of the court either in this case, No. 432, or in the companion case, No. 433, on the

docket of this court (The Supreme Court of the United States) because of the fact that he was a non-resident attorney attending court in a foreign jurisdiction, and on this ground and this alone, both causes were dismissed by the district court on motions to quash the service of process in each case. This left the complainants in both cases without recourse unless they should go to Chicago, the then residence of petitioner (now, Milwaukee, Wisconsin, we understand) and there contest the right of the petitioner to take pendente lite approximately $90,000.00 of the funds in litigation. The records of the court would have to be transcribed, including thousands of pages of evidence and all the questions involved in the original case would probably have to be contested in a court unfamiliar with the proceedings.

It was contended by the complainants in the lower court,

(A) That the filing of the creditors bill in cause No. 129 created an equitable levy on the entire estate of Mrs. Florence T. Holland, and the funds taken by petitioner with full knowledge thereof, were at the time of taking in *gremio legis.*

Section 328, Hemingway's Code of Mississippi, 1927

Lumber Co. v. Lumber Co. 85 Miss. 54

Yates v. Council, 137 Miss. 381

Miller v. Sherry, 69 U. S. 249

Evans v. Welch, 63 Ala. 250

Dillard & Coffin v. Smith, 59 S. W. 1010

27 C. J. Section 860

Friedman v. Earle, 110 U. S. 710

Metcalf Bros. v. Barker, 187 U. S. 165

U. S. v. Pierce Oil Co. 254 U. S. 397

Marsell v. Bank, 91 U. S. 357

Ex Parte Boyd, 105 U. S. 647

(B) That the doctrine of lis pendens applied to petitioner as a taker pendente lite with notice of the equities.

46 C. J. 542-43- 44-45

Hazelhurst v. The Lulu, 10 Wall. 192

Lytle v. Town of Lansing, 147 U. S. 59

Scotland v. Hill, 112 U. S. 183

Freeman on Judgments, 5th Ed. Vol. I, Sections 519-526, inclusive

Stewart v. Lansing, 104 U. S. 505

Orleans v. Platt, 99 U. S. 676

(C) That such taker pendente lite, with knowledge of the equities is bound by the suit; and as to land, writ of possession may be issued against him though he is not a party to the suit.

Mullen v. Moline Iron Co. 131 U. S. 371

Union Tr. Co. v. So. Etc. Imp. Co. 130 U. S. 565

Tilton vs. Cofield, 93 U. S. 163

Warren v. Marcy, 97 U. S. 96

Terrel v. Allison, 88 U. S. (21 Wall.) 289

Walden v. Bodley, 50 U. S. (9 How.) 34

(D) That since the property taken pendente lite by the petitioner was in gremio legis in cause No. 129 the same court should decide the question concerning its transfer pendente lite, and not the court of the residence of the petitioner.

Illinois Steel Co. v. Putnam, 68 Fed. 517

Adams v. Merc. Tr. Co. 66 Fed. 620

Long v. Choctaw, Okla. Co. 160 Fed. 365

Re: Ins. Corp. v. Mutual Ins. Co. (C. C. A. 5) 45 Fed. (2) 593

Ward v. Foulkrod, 264 Fed. 630

Sharp v. Bonham, 213 Fed. 667

Kline v. Burke Constr. Co. 260 U. S. 226

Harkin v. Brundage, 276 U. S. 36

Palmer v. Texas, 212 U. S. 118

Heidreter v. Elizabeth Oil Cloth Co. 112 U. S. 294

Chicot Co. v. Sherwood, 148 U. S. 529

Julian v. Central Tr. Co. 193 U. S. 93

Wabash R. R. Co. v. Adelbert College, 208 U. S. 38

Metcalf v. Barker, 187 U. S. 165

(E) The petitioner having received pendente lite, with full knowledge of the equities, part of

the property then in the actual or constructive possession of the court, he, then and there for all practical purposes became bound by the suit and it was proper to bring him in as a purchaser pendente lite for the purpose of canceling his claim of title to any of the property, and making him return into court any part of the subject matter of the litigation.

Tilton v. Cofield, 93 U. S. 163

Cabell v. Ellis, 110 U. S. 389

Jefferson v. Driver, 117 U. S. 272

Root v. Woolworth, 150 U. S. 401

Story's Equity Pleading, 10th Ed. Sec. 342-343

VII.

The District Court Had Jurisdiction with Reference to the Parties as Well as the Subject Matter in Litigation and Should Have Retained That Jurisdiction and Not Referred the Parties to the Jurisdiction of the Residence of the Attorney of the Defendant Who Had Received a Part of the Subject Matter in Litigation Pendente Lite.

Empire Trust Co. v. Brooks, 232 Fed. 641

Harkin v. Brundage, 276 U. S. 36

Ward v. Foulkrod, 264 Fed. 627

Kline v. Burke Const. Co. 260 U. S. 224

Palmer v. Tevas, 212 U. S. 118

Farmers Loan Co. v. Lake St., etc., 177 U. S. 59

See also cases cited under (D) *page 38 hereof.*

VIII.

REPLY TO PETITIONER'S BRIEF ON THE MERITS

The foregoing parts of this brief were written without the advantage of having before us petitioner's brief on the merits. That brief arrived on this date, January 4, 1932. Since in the foregoing we have covered practically all of the citations and authorities quoted by counsel for petitioner in the brief on the merits, we shall, since our time is limited to file our reply, only take this occasion to reply to the arguments and reasonings advanced by them in said brief.

We call the court's attention that under Division II "Statement of the Case" Pages 2 and 3 of the brief counsel outline the figures of the amount in controversy in the main cause, attempting to make the point that only a small number of judgment creditors had intervened when petitioner got the money in controversy. He forgets that the United States Government had intervened for an amount of approximately $681,163.40 income taxes which intervention is not set forth in full in the record, but is referred to in petitioner's answer in No. 129 (R. Page 154) where it is shown that the Government on or about December 17, 1928, intervened for $681,163.40. This intervention was pending throughout the entire case until final decree at which time $7,000,000.00 of other judgments were entered. The court below, of course, had the whole record of the case before it on this supplemental petition in cause No. 129.

At page 5 of the brief on the merits counsel suggests that the decree in the main cause No. 129 was

a consent decree, inferring thereby that (a) the petitioner would not be bound thereby; (b) that since the main cause was settled by consent a supplementary proceeding would take the same course and/or (c) that the Circuit Court of Appeals had no jurisdiction of the appeal because, forsooth, there was no appeal from the consent decree. We have answered this contention already under heading III Especially page 30 of this brief but take this occasion to say again that whether by consent or not the decree entered in cause Number 129 has nothing to do with this supplementary proceeding because that decree especially reserved decision on the supplemental decree, at petitioner's request. We cannot understand why counsel continually speak about a consent decree when they ought to know that this cause on the merits in No. 129 was decided by the court after full trial and the hearing of evidence, and an opinion delivered by the court. A decree was then drawn in accordance with the opinion of the court and only consented to as to form, etc., and while Mrs. Holland was given certain exempt property such as her homestead, etc., as shown in the decree, that could in no way affect the petitioner.

The supplementary petition was reserved especially in the decree for hearing and at the end of the decree it appears (R. Pages 146-147) that the hearing on the supplementary petition was set especially for hearing on June 9, 1930. It is also provided in the decree that

"Wm. E. Lamb, or Butler, Lamb, Foster & Pope not to be prejudiced hereby."

It is not a question now as to whether the petitioner is bound by the decree since it is provided therein that he shall not be prejudiced thereby. The simple question is presented to the court in this case as to whether or not sufficient evidence was before the court in the supplementary proceeding to show a question before the district court on the motion to quash the process as to petitioner's liability for a part of the subject matter of the litigation and whether or not that cause should have been quashed and Lamb dismissed without day, or whether it should have been retained by the lower court for trial on the merits. Counsel refer to only one case in regard to consent decree, to-wit:

Hodgson v. Vroom, 266 Fed. 267

which is not in any way in point in the present case and was a case wherein res adjudicata was pleaded and the court held that on account of the decree being a consent decree same was not res adjudicata.

The petitioner well knew that he would have been bound in every respect by the decree had he not insisted, as a courtesy to him, that there should be entered in the decree a clause that he was not to be prejudiced thereby (though he was a party at the time) and that the matters in which he was connected were not consented to and were set forward to be heard on the 9th of June, 1930.

Counsel insist on calling the answer of petitioner (R. Pages 146-147) special appearance. We refer the court to heading V., page 34 in this brief where the cases are cited showing that such an appearance though it may be called special is an appearance generally, and see the answer itself. (R. Page 147.)

At Paragraph 2, Page 20, counsel for petitioner insist that unless served with subpoena, even though Lamb answered in full, he is still not a party to the cause. Counsel cite:

In Re: Tacoma Freight Inc., 5 Fed. (2) 752

Upon a reading of this case it appears that it was a default for answer not filed. No subpoena was issued in a bankrupt matter and the bankrupt failed to answer but appeared in court voluntarily. The conditions in that case are not similar to the case at bar.

We notice counsel in quoting from the order of the court quashing the process in this case at Page 22 in his brief, and in quoting from the answer of Lamb at the same page of the brief has failed to quote material portions of both. This court will not be misled by partial quotations. The order of the court quashing the process (R. Pages 175-177) shows that the matter came on to be heard.

"Upon the petition of plaintiffs for the citation of Wm. E. Lamb for contempt, *and* for an order to turn over money paid to said Lamb by

the defendant, *and* upon the motion to quash the process *and* dismiss the petition for the citation of Wm. E. Lamb for contempt, *and* for an order to turn over money paid Lamb by the defendant." (R. Page 175.)

The court in said decree (R. Page 176) not only quashed the process and dismissed the petition for citation but also dismissed the supplemental proceedings "for an order to turn over money paid him by the defendant."

The respondents here complain, of course, that the court considered the petition in any manner as a criminal contempt proceeding and contend that counsel for the defendant have misconstrued the proceeding. The truth about it is the whole hearing on the motion to quash went off on the proposition of the privilege of petitioner, a non-resident attending court in a foreign jurisdiction, not being subject to process in this or the companion case, cause No. 433. All these other questions came up as an afterthought in the Circuit Court of Appeals. That counsel for the plaintiffs below (respondents here) considered this to be so is to be seen in their objections to the inclusion in the record of certain parts thereof, (R. Page 192) where it was stated that the only question presented to the judge of the lower court was the privilege of the petitioner.

Counsel call the pleadings of the plaintiffs in the cause "hybrid." We should like to find a name a little stronger than hybrid for the so-called "Motion to Quash the Process," the many grounds of which

have created the interminable arguments advanced by counsel.

Under heading III, Page 24 of their brief on the merits counsel argue the facts as to whether or not petitioner will finally be held liable for the funds, and whether or not the funds were trust funds, or in the hands of the court. We have covered these arguments under headings VI (a), (b), (c), (d) and (e) of this brief already but insist that these matters are for the district court on the merits when this case finally arrives there.

The discussions on Pages 27 and 28 in their brief on the merits by counsel for the petitioner with regard to the difficulties that will face the district court if this case is sent back seem to us a prayer here to affirm the district court because of the dilemma which seems to face the petitioner if any other course were pursued. None of the questions suggested by counsel in that statement will arise if we are correct in the assumption that by his answer (R. Page 147) the petitioner acknowledged service and appeared in court and is now a party to the supplemental proceeding in cause No. 129 When one appears in court officially under his own oath and by counsel no service of subpoena is needed. He then becomes a party to the cause and under the jurisdiction of the court.

The fact that Schmitt, Receiver, has filed an ancillary bill (No. 162, here No. 433) regarding the

same subject matter and parties is not a question before the court. Upon proper plea in abatement in either of the causes below the court in its discretion may abate one or the other, or it may under the equity rules consolidate the two cases and hear them together. There is no occasion for counsel for the respondents to state now the reasons for the filing of the additional and ancillary proceeding in cause No. 162. The filing of that bill was out of precaution and at the instance of the receiver. The petitioner need give himself no uneasiness as to how the district court will proceed since the law in the matter is, in our opinion evident.

We desire, in addition to those authorities under heading VI (b) hereof, to add, what we think is an authority in point on the liability of petitioner, namely:

Opinion No. 29 of the Committee on Professional Ethics and Grievances Concerning Matters of Professional Conduct of the American Bar Association made to the 54th Annual Meeting at Atlantic City, New Jersey, Thursday, Friday and Saturday, September 17, 18, 19, 1931.

The question is there submitted to the Committee on Professional Ethics and Grievances as follows:

> "A, an attorney, was employed by W. to bring suit against X to cancel and rescind a real estate transaction in which W had purchased a hotel property from X. Recission was sought on

the ground that X had induced the transaction by means of false and fraudulent representations. As part of the consideration for the hotel property, W had deeded to X certain land in Canada. If a decree of cancellation and recission were entered, it would require X to reconvey the Canadian land to W. After trial, the court denied the recission, but refused to dismiss the action on the ground that plaintiff, W, was entitled to recover damages. W then filed a motion for a new trial, which was granted.

Shortly after the trial, and before the motion for a new trial had been granted W heard that X was trying to sell the Canadian land, and, upon inquiry, discovered that X had deeded the land to his attorney, B, who had represented him in the trial. B had full knowledge of the fraud claimed but asserts that he took the deed to insure the payment of his fees.

May B properly attempt to convey the land to an innocent purchaser for value so as to get his fee in cash?

In the event that the court finds that the plaintiff is entitled to relief and enters a decree of recission requiring X to reconvey the Canadian land to W, can B claim the land, or a lien thereon, on account of fees due him from X?"

The Committee's opinion was stated by Mr. EVANS, Messrs. Howe, Harris, Pace and Gallert concurring.

'It was proper for B to accept a conveyance of the land in question for the purpose of se-

curing his fees and disbursements, only if he accepted it to be held subject and junior, in all respects to the rights of W, as finally adjudicated by the court. Therefore, it would be improper for B, unless the litigation be finally determined in favor of X, to convey the land to an innocent purchaser for value, since the right to the property is before the court and B, as an officer of the court, cannot properly do anything that may interfere with the execution of the decree of the court.

'As any and all claims of B in or to the land in question, even if conveyed to him and standing in his name, are subject and junior to the rights of W, as adjudicated by the court, B cannot properly claim the land, or any lien thereon if the court orders that it be reconveyed to W.' "

It will be noted that in the above matter the court did not have actual possession of the property, but it was well known that in a final decree the court might have to take possession of the property if a decree of recission was rendered.

CONCLUSION

We respectfully submit that the decree of the Circuit Court of Appeals was correct, and that it should be affirmed.

Respectfully submitted,

GERALD FITZGERALD,
Counsel for Respondent

GARNER W. GREEN,
SAM C. COOK.
of Counsel.

SUBJECT INDEX

No. 432

I. IN ADDITION TO HIS ACCOUNTABILITY TO THE DISTRICT COURT IN THIS SUPPLEMENTAL PROCEEDING FOR THE FUNDS TAKEN UNDER THE (1) DOCTRINE OF LIEN OF EQUITABLE LEVY CREATED BY THE FILING OF THE ORIGINAL BILL, AND (2) THE DOCTRINE OF PURCHASER PENDENTE LITE, THE PETITIONER'S POSITION ALSO COMES WITHIN THE FURTHER ADDITIONAL (3) DOCTRINE OF THE TAKER OF TRUST FUNDS WITH FULL KNOWLEDGE OF THE EQUITIES - - - - - - - - 1.

II. AN ATTORNEY IS AN OFFICER OF THE COURT, THE ALTER EGO OF HIS CLIENT. ALWAYS "IN COURT." SUBJECT TO SUMMARY ORDER OF THE COURT. HE CANNOT BE A TAKER BONA FIDE OF SUBJECT MATTER IN LITIGATION EITHER FOR ATTORNEY'S FEES, OR OTHERWISE, ESPECIALLY IF SUCH SUBJECT MATTER OF LITIGATION IS TRUST FUNDS - - - - - - 7.

III. THE RESPONDENTS WERE CORRECT IN PROCEEDING IN THE LOWER COURT BY SUPPLEMENTAL PETITION IN THE ORIGINAL CASE AS AGAINST PETITIONER, A DEBTOR OF THE ESTATE - - - - - - 16.

IV. THE EXACT DESCRIPTION OF THE TRUST ESTATE IN THE ORIGINAL BILL, PLEADINGS AND PROCEEDINGS, WAS NOT NECESSARY IN ORDER THAT PETITIONER MIGHT HAVE FULL KNOWLEDGE OF THE EQUITIES THEREIN SET FORTH AND BE BOUND THEREBY IN HIS DEALINGS WITH THE ESTATE - - - - - - - - - - 19.

TABLE OF CASES

Agricultural Bank v. Dorsey, Freeman Chy. (Miss.) 338 - - - - - - - - - - - - - - - 4.
Ames v. Dorroh, 76 Miss. 187 - - - - - - - 3, 4.
Bank of Hickory v. McPherson, 102 Miss. 852 - - 3.
Bergerone, In Re: Mass. 107 N. E. 1007 - - - - 15.
Bien v. Robinson, 208 U. S. 421 - - - - - - 17.
Blossom v. Milwaukee, etc. R. R. Co. 1 Wall (68 U. S. 655) - - - - - - - - - - 17.
Boyd, Ex Parte, 105 U. S. 647 - - - - - - - 3.
Brent v. Maryland, 18 Wall. 430 - - - - - - 13.
Broussard v. Crawford, 251 U. S. 560 - - - - 3.
Browning v. DeFord, 178 U. S. 196 - - - - 5, 12.
Calhoun v. Burnett, 40 Miss. 599 - - - - - - 3.
Central National Bank v. Ins. Co., 104 U. S. 54 - - 5.
Citizens National Bank v. Grocery Co., 113 Miss. 87 3.
Crawford v. Broussard, 260 F. 122 (C. C. A. 5) - - 3.
Cunningham v. City of Cleveland, 98 Fed. 657 - 18.
Galpin v. Page, 18 Wall. 350 - - - - - - - 13.
Gay v. Parpart, 106 U. S. (16 Otto) 679 - - - 12.
Harmon v. Hoskins, 56 Miss. 142 - - - - - - 5.
Hodges v. Hickey, 67 Miss. 725 - - - - - - - 4.
Independent Coal & Coke Co. v U. S. 274 U. S. 640 4, 16.
Johnson v. Ingram, 9 Sou. 822 - - - - - - - 3.
Kneeland v. American Mortgage & Trust Co. 136 U. S. 89 - - - - - - - - - - - 17.
Kennedy v. Broom, 13 C. B. M. S. 677; 143 Reprint 268; 1 E. R. C. 789 - - - - - - - - - - 14.
Marks v. Bradley, 69 Miss. 1 - - - - - - - - 5.
Miller v. Sherry, 69 U. S. (2nd Wall.) 237 - - 21, 23.
Mills v. Gattman, 53 Miss. 721 - - - - - - 4.

TABLE OF CASES—*Continued*

Mitchell v. Bunch (2) Paige's Chancery, 22 Am. Dec. 669 - - - - - - - - - - - - 23.

Moore v. Crawford, 130 U. S. 122 - - - - - 3, 4, 6

Mosness, Matter of, 39 Wis. 509; 20 Am. Rep. 55 - 15.

Omaha National Bank v. Fed. Reserve Bank, 26 Fed. (2) 884 - - - - - - - - - - 5.

Orgill v. Gee, 152 Miss. 590 - - - - - - - - 3.

Peck v. Elliott, 79 Fed. 10 (C. C. A.) - - - - - - 17.

Perry on Trusts (2nd) 5th Ed. 172, 211 - - - - 4.

Peters Branch Int. Shoe Co. v. Gunn, 121 Miss. 679 - 3.

Pomeroy Equity Jurisprudence, 4th Ed. Vol. 3, Sect. 1048-1053 - - - - - - - - - - - 3.

Riverdale Cotton Mill Co. v. Ala. & G. Mfg. Co. 198 U. S. 188 - - - - - - - - - - - 17.

Robinson Case, 131 Mass. 376, 41 Am. Rep. 239 - - 15.

Simmons v. Ingram, 60 Miss. 886 - - - - - - 3.

Smith v. Ayr, 101 U. S. 320 - - - - - - - 5.

Smith v. Jeffreys, 16 Sou. 377 - - - - - - - - 3.

Story Eq. Jur. 1, Par. 187 - - - - - - - - - 5.

Swinfen v. Chelmsford, 5 H. & M. 890 - - - - - 14.

Third Blackstone Commentary, Page 28 - - - - 14.

Thomson v. Hester, 55 Miss. 656 - - - - - - 4.

Union Pac. R. R. Co. v. McAlpine, 129 U. S. 305 - - 5.

Watson v. Dickens, 12th S. & M. (Miss. 1849) 608 4.

Wyoming Bank v. Omaha Nat. Bank, 278 U. S. 615 - 5.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 432

WILLIAM E. LAMB, PETITIONER

vs.

STERLING B. CRAMER, ET AL, RESPONDENTS

The brief for Petitioner in reply renders advisable the citation of additional authorities sustaining the points made in respondents' brief, and to make clearer certain points therein. Therefore this addendum to respondents' brief is filed.

I.

IN ADDITION TO HIS ACCOUNTABILITY TO THE DISTRICT COURT IN THIS SUPPLEMENTAL PROCEEDING FOR THE FUNDS TAKEN UNDER THE (1) DOCTRINE OF LIEN OF EQUITABLE LEVY CREATED BY THE FILING OF THE ORIGINAL BILL, AND (2) THE DOCTRINE OF PURCHASER PENDENTE LITE, THE PETITIONER'S POSITION ALSO COMES WITHIN THE FURTHER ADDITIONAL (3) DOCTRINE OF THE TAKER OF TRUST FUNDS WITH FULL KNOWLEDGE OF THE EQUITIES

As attorney for Mrs. Holland the petitioner was conclusively presumed to have known the facts known by her and he must, as a lawyer, have known what the consequences of the suit would be if com-

plainants' allegations were found to be true by the court.

It was alleged in the original bill: that the very estate unlawfully and fraudulently transferred from Holland to his wife was acquired from the several banks, plaintiff and intervenors, (R. 7) by his indorsement and guaranty, and that (R. 8-9) in order to avoid his liability he had transferred his whole estate to his wife, Florence T. Holland, the manner of the transfer being particularly set forth; that the result of said transfer was (R. 11) to divest the said Holland of all the property of every kind and character which he had and to invest his wife with all said property. A large part of the real estate is described, and it is stated (R. 19) that the whole of Holland's estate was transferred to his wife without consideration, including all his property both real, personal and mixed, and that he, the said Holland, proceeded (R. 20) to actually transact business and invest and reinvest the proceeds in the name of his wife, the effect being that W. P. Holland was doing business under the name of Florence T. Holland; that an injunction (R. 24-25) was sought to prevent further transfers; that a decree was sought impressing a lien upon all of the property (R. 25-27); that it was alleged (R. 27) that the said Florence T. Holland held in trust for the creditors of W. P. Holland all the said property.

The petitioner as counsel in the case must have known the legal effect of the filing of the original bill and must have known that from the earliest time the decisions of the State of Mississippi have held:

A Fraudulent Grantee is in Law a Trustee EX MALEFICIO for the Benefit of the Creditors of Fraudulent Grantor.

Calhoun v. Burnett, 40 Miss. 599
Simmons v. Ingram, 60 Miss. 886
Johnson v. Ingram, 9 Sou. 822
Smith v. Jeffrey, 16 Sou. 377
Ames v. Dorroh, 76 Miss. 187
Bank of Hickory v. McPherson, 102 Miss. 852
Citizens National Bank v. Grocery Co. 113 Miss. 87
Peters Branch Int. Shoe Co. v. Gunn 121 Miss. 679
Orgill v. Gee, 152 Miss. 590

In fact, petitioner must have known as a general principal of law that:

The Grantee of Property in a Fraudulent Conveyance is a Trustee for the Creditors of the Grantor.

Pomeroy Equity Jurisprudence, 4th Ed. Vol. 3, Sect. 1048-1053
Moore v. Crawford, 130 U. S. 122
Ex Parte Boyd, 105 U. S. 647
Crawford v. Broussard, 260 F. 122 (C.C.A. 5)

Cert. denied in above in

Broussard v. Crawford, 251 U. S. 560.

Also that,

The Taker of Trust Funds, with Knowledge of the Equities, from a Fraudulent Grantee Occupies the Same Position of Trust as the Fraudulent Grantee.

Watson v. Dickens, 12th S. & M. (Miss. 1849) 608

Agricultural Bank v. Dorsey, Freeman Chy. (Miss.) 338

Mills v. Gattman, 53 Miss. 721

Thomson v. Hester, 55 Miss. 656

Hodges v. Hickey, 67 Miss. 715

Ames v. Dorroh, 76 Miss. 187

Independent Coal & Coke Co. v. U. S. 274 U. S. 640

We quote from the *Independent Coal & Coke Co.* case as follows:

> "It is ancient and familiar learning that one who fraudulently procures a conveyance may not defeat the defrauded grantor or protect himself from the consequences of his fraud by having the title conveyed to an innocent third person. Cf. Merry v. Abney, Freem. Ch. 151, 22 Eng. Reprint, 1123; Moore v. Crawford, 130 U. S. 122, 128, 32 L. Ed. 878, 880, 9 Sup. Ct. Rep. 449; H. C. Girard Co. v. Lamoureux, 227 Mass. 277, 116 N. E. 572; McDaniel v. Sprick, 297 Mo. 424, 249 S. W. 611. Equity may follow the property until it reaches the hands of an innocent purchaser for value.

Moore v. Crawford, 130 U. S. 120
Second Perry on Trusts, 5th Ed. 172, 211

No Actual Fraud is Necessary. It is Enough that the Taker, with Knowledge, Acquired the Property from a Fraudulent Grantee not as a Bona Fide Purchaser for Full Consideration.

Smith v. Ayr, 101 U. S. 320
Central National Bank v. Ins. Co., 104 U. S. 54
Union Pacific R. R. Co. v. McAlpine, 129 U. S. 305
Omaha National Bank v. Fed. Reserve Bank, 26 Fed. (2) 884

Certiorari denied in the above in

Wyoming Bank v. Omaha National Bank 278 U. S. 615
Browning v. DeFord, 178 U. S. 196
Harmon v. Hoskins, 56 M. 142
Marks v. Bradley, 69 M. 1

"Fraud, indeed, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. And courts of equity will not only interfere in cases of fraud to set aside acts done, but they will also, if acts have by fraud been prevented from being done by the parties, interfere and treat the case exactly as if the acts had been done."

1 Story, Eq. Jur. Paragraph 187

Whenever the legal title to property is obtained through means or under circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same, although he may never, perhaps,

have had any legal estate therein; and a court of equity has jurisdiction to reach the property either in the hands of the original wrongdoer, or in the hands of any subsequent holder, until a purchaser of it in good faith and without notice acquires a higher right and takes the property relieved from the trust.' Pomeroy, Eq. Jur. Par. 1053.

In *Huxley v. Rice, 40 Mich. 82*, it is said:

'It is the settled doctrine of the court that where the conveyance is obtained for ends which it regards as fraudulent, or under circumstances it considers as fraudulent, or oppressive, by intent or immediate consequence, the party deriving title under it will be converted into a trustee in case that construction is needful for the purpose of administering adequate relief; and the setting up the Statute of Frauds by a party guilty of the fraud or mistake, in order to bar the court from effective interference with his wrong-doing will not hinder it from forcing on his conscience this character as a means to baffle his injustice or its effects.' The fraud of which Moore was guilty was in preventing the conveyance to himself, which would have inured to Monroe, and in obtaining it to his wife, so as to reap the benefit which belonged to his grantee. Mrs. Moore stands in her husband's shoes, and by accepting with knowledge is to be treated as a party to his fraud and profiting by it, or as a mere volunteer, assisting him to perpetrate the fraud and to profit by it, and is hence to be held, as he could have been, a trustee *ex maleficio*."

Moore v. Crawford, 130 U. S. 122

II.

AN ATTORNEY IS AN OFFICER OF THE COURT, THE ALTER EGO OF HIS CLIENT. ALWAYS "IN COURT". SUBJECT TO SUMMARY ORDER OF THE COURT. HE CANNOT BE A TAKER BONA FIDE OF SUBJECT MATTER IN LITIGATION EITHER FOR ATTORNEY'S FEES, OR OTHERWISE, ESPECIALLY IF SUCH SUBJECT MATTER OF LITIGATION IS TRUST FUNDS.

Counsel for petitioner iterates and reiterates the fair and honorable position which petitioner occupies in this case, but a closer examination of the facts shows, with due deference, that his position is not so enviable. In our brief on the merits on Pages 7-8 and 15 the following voluntary actions of petitioner are cited as having the effect of general appearance by him to the supplemental proceedings, and waiver by him of personal jurisdiction of the court, (in addition to his position as counsel in the case) viz.,

(1) By allowing the restraining order (R. 127) to be entered, by consent, against the defendant and petitioner as her attorney; (See respondents' brief, Pages 7-8).

(2) The entry in the decree in the original cause, to which he was then a party, of the reservation, "William E. Lamb, or Butler, Lamb, Foster & Pope not to be prejudiced hereby" (R. 146) (See respondents' brief, Page 8).

(3) His answer seeking complete exoneration. (R. 147-172.) (See respondent's brief, P. 8.)

(4) His agreement in person to continue the hearing on the citation to June 9, 1930. (R. 146-147) (See respondents' brief, Page 8) (See respondents' brief also at point V, Page 34, for the cases sustaining the propositions).

In answering these several propositions counsel for the petitioner seek, with a few well chosen words, to sweep away the effect of the actions of petitioner by the following statements made on Pages 10 and 11 of their reply brief herein as follows:

By (1) (Reply brief Page 10) That although petitioner had been made a party to the cause (R. 130) on petition for the very order (R. 126) and although the same order (R. 127) was entered by consent that the words "enjoining and restraining the defendant, Florence T. Holland, either personally, through her agents or attorneys, from directly or indirectly distributing, disposing, mortgaging or otherwise alienating, etc." did not refer to the petitioner.

We cannot understand what other conclusion could be drawn either by the district court or by this court than that the supplemental petition was filed for the very purpose of setting aside the transfers made from Mrs. Holland to petitioner and others, and that said petition sought an injunction to prevent further transfers pending the hearing, and that the order by consent was entered for the very purpose of enjoining this petitioner, or Mrs. Holland, from making any further transfers.

By (2) (Reply brief Page 10) Counsel explains that the request of petitioner that entry be made in the final decree, providing no prejudice to petitioner thereby, was a request made to counsel and not to the court, thereby making a distinction without a difference, and seeking to withdraw from the effect of the decree and making it a contract and not an order of the court.

By (3) (Reply brief, Page 11) Counsel attempts to explain away the order of continuance entered by consent (R. 146-147) by saying that it was an order of a continuance of the citation and not of the supplemental petition. However present counsel for petitioner may regard this "bifurcated," "hybrid" petition so contemptuously referred to by them (and "contemptuously" here does not mean "civil" contempt) petitioner himself evidently understood very well what was meant by the pleading whatever its name may be because in his answer which was filed in obedience to the agreement to continue, he answered (R. 147) the "*petition* upon which the citation was issued," and in addition very plainly stated in his answer at the beginning of each paragraph of his answer (R. 147-172) that he was answering the *petition* paragraph by paragraph, and finally, that there might be no mistake, he stated in one paragraph of his answer (R. 169) that he was also answering the *citation* as well as the *petition*, and stated further:

> "Now having fully answered both said *citation* and said *petition*, said William E. Lamb prays that he be held to have committed no

> contempt as in the *petition* alleged, or as in the *citation* charged, and that he be fully and completely exonerated from all charges herefor, and fully and completely discharged from said *citation*, and that the same be discharged as against him; that the said *petition* be *dismissed* as against him, and that he be hence dismissed with his costs, etc."

Explaining away this answer in (No. 4) counsel for petitioner say: (Reply brief, Page 11)

> "Faced with such charges, calling in question his professional conduct and disparaging his reputation, he, (petitioner) thought it essential to make a full and detailed answer to the allegations and to ask exoneration from the contempt charge. That he did and no more."

If petitioner's counsel had stopped with that statement the position would have been much clearer, but in the next breath they state that petitioner, although he desired fully to answer the charges which he thought called in question his professional conduct and disparaged his reputation yet counsel say that petitioner,

> "attempted and intended to limit his appearance."

and make the statement, (Reply brief, Page 12)

> "And it is not suggested how he could have guarded his appearance to that purpose more completely than he did."

We cannot understand how any counsel who seeks to defend his conduct and answer charges

which he thought disparaging to his reputation could want to "limit" or "guard" his appearance. It appears to us that such an action would have the effect of "limiting" the inquiry into such charges and "guarding" against the full inquiry which he ostensibly offered.

The present counsel have no intention of casting any aspersions upon the character of petitioner, and here assert that there is no personal feeling of any kind involved in the trial of these questions. There is sought to be submitted to the court directly the legal question whether or not a trustee *ex maleficio* seeking to withhold the trust estate from its rightful owners may pay out for that purpose a great part of the corpus of the estate to one assisting in the withholding of the estate, whether an attorney or any other person, who has full knowledge of the entire situation.

Respondents seek to know the facts in reference to this transfer *pendente lite* of a large portion of the estate. They have not been informed what contract was entered into between the trustee *ex maleficio* and petitioner in regard to fees or whether the fees paid were by contract or otherwise. They have not been allowed to inquire as to the rights of the various parties under existing equities, but have been met at every turn with technical "limited" and "guarded" appearances, and confronted with claimed "privileges" on behalf of an attorney who seeks to have written into the record an exoneration clearing his character and reputation on the equities but founded upon technical privileges.

It is stated by this court in the case of *Gay v. Parpart* in no uncertain terms that no attorney can be an innocent purchaser for value of property in litigation who bought while the suit was pending, and who was attorney for a party in that suit throughout and whose purchase was from such party.

Gay v. Parpart, 106 U. S. (16 Otto) 679

In the case of *Browning v. DeFord* Mr. Justice Brown delivered the opinion for this court, holding that

> "It is consonant neither with good morals, nor with sound sense to hold that one may take a mortgage upon the property of another which he knows to have been fraudulently acquired and to which the purchaser has no valid title, whether the vendor elect to pursue the purchaser by a retaking of the property, or by an action for the price and an attachment of the property to secure the debt. Whichever remedy be pursued the fact remains that at the time the mortgage was taken, the mortgagor had a voidable title to the property mortgaged".

Browning v. DeFord, 178 U. S. 196

In the above case Mr. Vance was an attorney in the case and claimed to have had no knowledge of the fraudulent character of the purchases made by Wolf & Sons upon some of which purchases he, Vance, took security, but the court held that the fact that he was a lawyer and intimately connected

with the matters was sufficient to justify the court in laying the whole matter of his connection with the alleged fraudulent scheme before the jury.

In *Galpin v. Page*, this court said:

> "The decree being thus reversed, the title acquired by Page, the purchaser at the commissioner's sale, fails with it. He was one of the attorneys of the plaintiff, Gray, and the law imputes to him knowledge of the defects in the proceedings, which were taken under his direction and that of his copartners, to obtain service upon the infant. The conveyance by him of an undivided half to his law partner, also one of the plaintiff's attorneys, was made after the decree of the district court had been reversed for want of jurisdiction over the infant. The partner also took his interest with knowledge of this defect. The protection which the law gives to a purchaser at judicial sales, is not extended, in such cases, to the attorney of the party who is presumed to be cognizant of all the proceedings".

Galpin v. Page, 18 Wall. 350

Brent v. Maryland, 18 Wall. 430

Counsel for petitioner on Page 13 of their reply brief, and on Pages 26-27 of their original brief, liken the position of petitioner in receiving this large portion of the trust estate to an innocent physician, or hotelkeeper furnishing the trustee *ex maleficio* the necessities of life.

In this present case the petitioner cannot by any means place himself in the position of the butcher, the baker, or the candlestick maker. He oc-

cupies a much more dignified position and, therefore, subject to more responsibility, his responsibility being measured by his position and his knowledge of the equities in the case.

It is not our contention that lawyers ought not to be paid fees in proper cases. Such a doctrine would be self-destructive. We read that in former times counsellors, advocates, and barristers had no right to charge and *enforce* the payment of compensation for their services, such services being considered as purely honorary and being presumed to be rendered gratuitously.

Kennedy v. Broom, 13 C. B. M. S. 677
143 Reprint 268; 1 E. R. C. 789;
Third Blackstone Commentary, Page 28

Also,

Swinfen v. Chelmsford, 5 H. & M. 890

where the court said:

> "They have no legal claim to any remuneration for the services they render, though they usually receive a fee, a honorarium, and they undoubtedly (in the ordinary course of business) enter into no express contract."

While this rule does not prevail in the United States, nevertheless, it is a very far cry to say that the honorable profession has departed so far from the original rule that one claims to be entitled to so large a portion of a trust estate as a fee for assisting the trustee in an attempt to destroy the trust or in

withholding said estate from the cestius trust thereby consummating the fraud.

> "An attorney at law is in a sense an officer of the state with an obligation to the public no less significant than his obligation to his client."

In *Re: Bergerone, Mass. 107 N. E. 1007*

> "An attorney at law is not indeed in the strictest sense a public officer, but he comes very near it as was said by Lord Holt 'the office of an attorney concerns the public and it is for the administration of justice'."

Robinson Case, 131 Mass. 376
41 Am. Rep. 239

> "Attorneys * * * though not properly public officers, are quasi officers of the State whose justice is administered by the courts."

Matter of Mosness, 39 Wis. 509
20 Am. Rep. 55

It is an elementary principle of law that an attorney employed by a trustee can never look to the trust estate for pay for his services but the contract is personal with the trustee. In no case have we been able to find that an attorney has been allowed to retain as fees a part of a trust estate for his unsuccessful services in seeking to destroy the trust.

III.

THE RESPONDENTS WERE CORRECT IN PROCEEDING IN THE LOWER COURT BY SUPPLEMENTAL PETITION IN THE ORIGINAL CASE AS AGAINST PETITIONER, A DEBTOR OF THE ESTATE.

In addition to the authorities cited in our brief herein at Page 38, paragraph (D) of Point VI, the following authorities are pertinent to the above proposition.

Independent Coal & Coke Co. v. U. S.
274 U. S. 642

from which we quote:

> "The suit is in the nature of a supplemental bill in aid of the former decree and is an appropriate method of securing the benefit of the first decree when subsequent events have made necessary some further relief in order that the plaintiff may enjoy the full fruits of the victory in the first suit. Cf. Root v. Woolworth, 150 U. S. 401, 37 L. Ed. 1123, 14 Sup. Ct. Rep. 136; Shields v. Thomas, 18 How. 253, 262. 15 L. Ed. 368, 372; Thompson v. Maxwell Land-Grant & R. Co., 95 U. S. 391, 24 L. Ed. 481; Story Eq. P. 10th Ed. Paragraphs 338, 339, 345, 351 (b) 353, 429, 432; Cooper, Eq. Pl. 74, 75. In determining the scope of the present bill and the relief which may be given upon it, we may consider the pleadings and proceedings in the earlier suit, the nature of which are fully disclosed in the opinion and decree in that suit, which are pleaded here."

Also compare:

Riverdale Cotton Mill Co. v. Ala. & G. Mfg. Co., 198 U. S. 188

Blossom v. Milwaukee, etc. R. R. Co. 1 Wall (68 U. S. 655)

Kneeland v. American Mortgage & Trust Co. 136 U. S. 89

Bien v. Robinson, 208 U. S. 423

Peck v. Elliott, 79 Fed. 10 (C. C. A.)

The above case of *Peck v. Elliott* is interesting because decided by the Circuit Court of Appeals of the *Sixth* Circuit, Judges Taft, Lurton and Sage sitting and Judge Lurton delivered the opinion of the court. The case was one wherein by auxiliary petition in the original suit receiver asked the aid of the court to enable him to collect a debt due the corporation for stock liability. In this connection Judge Lurton, speaking for the court, said:

> "The jurisdiction of the court in the principal cause is not questioned, and cannot be in this collateral suit. Compton v. Railroad Co., 31 U. S. App. 486-529, 15 C. C. A. 397, and 68 Fed. 263; Mellen v. Iron Works, 131 U. S. 352-367, 9 Sup. Ct. 781; Lumley v. Railroad Co., 22 C. C. A. 60, 76 Fed. 66. The fact that the circuit court had possession of all the assets of the Southern Malleable Iron Company, for the purpose of winding up its affairs as an insolvent corporation, is the fact which made it admissible to bring a debtor of that corporation into the court, *to the end that his debt might be ascertained and payment coerced. For the purpose of collecting in choses in action, the*

court might direct its receivers to institute independent suits in that or courts of the state, or cause such debtors *to be made defendants in the principal cause*, and determine for itself any question which might be involved by the defenses to the claim. Such a proceeding *would not involve any question of citizenship, or amount in controversy, nor mode of trial.* The complete jurisdiction of the court over the res, the property and assets of this corporation, involved its rights to bring before it persons having possession of any of those assets or having claims thereon, or *who were indebted to it*, and *either itself hear and determine all controversies*, or refer them to a master or to a jury, as it saw fit. A court of equity is not deprived of jurisdiction simply because a purely legal question becomes collaterally involved. It might, in its discretion, submit such controversy upon issues made to a jury, or dispose of them without doing so. That the liability of appellee was one of a legal character did not operate to defeat the jurisdiction, and bring its proceedings against him to a stand. These questions seem conclusively settled by White v. Ewing, 159 U. S. 36, 15 Sup. Ct. 1018, a case which arose upon a like proceeding in the same court, and in which certain questions were certified by this court under the court of appeals statute". (Italics ours.)

The above case of *Peck v. Elliott* was followed by the same circuit in

Cunningham v. City of Cleveland,
98 Fed. 657

Counsel have made much in their brief of the fact that there were two proceedings as against the

petitioner, one by supplemental petition in the present cause, and the other by original ancillary proceedings in cause No. 433 (this docket). The second suit No. 433, was filed by the receiver alone since he was appointed by final decree after the supplementary petition had been filed by the respondents in cause No. 432 (this docket). It was thought by the receiver that since he had been authorized by the decree to bring necessary suits to collect assets of the estate that he would rather disassociate the claims of the respondents in the supplemental proceedings with his own claims as receiver under the decree, as he had a right to do. The proceedings could easily have been consolidated by the court, and it was thought that this ancillary proceeding would eliminate all questions of contempt, and the case might be tried on the merits to see whether or not the petitioner was entitled to approximately one-third of the estate finally recovered.

IV.

THE EXACT DESCRIPTION OF THE TRUST ESTATE IN THE ORIGINAL BILL, PLEADINGS AND PROCEEDINGS, WAS NOT NECESSARY IN ORDER THAT PETITIONER MIGHT HAVE FULL KNOWLEDGE OF THE EQUITIES THEREIN SET FORTH AND BE BOUND THEREBY IN HIS DEALINGS WITH THE ESTATE.

On pages 12-18 in their reply brief counsel for the petitioner responds to points V, VI, VII, VIII, made in respondents' brief and sets up at large a defense on the merits in behalf of petitioner to the effect:

1. That there was not a sufficient description of the trust property in the original bill.

2. That it was not shown that the property sought to be charged with lien was within the jurisdiction of the court at the time of the filing of the bill.

3. Setting forth the amount of work done by the petitioner for Mrs. Holland, the fraudulent grantee, about this suit and other matters and alleging that he was equitably entitled to his fees.

It is stated by counsel on Page 13 of the reply brief as follows:

> "Respondents have cited to the Court a large number of cases to show that under the law of Mississippi, the filing of a judgment creditor's bill creates an equitable lien upon the property of the defendant described in the bill and that all subsequent transferees *pendente lite* take subject to this lien. There is no need for us to discuss in detail these cases, most of which are only remotely in point: for *we do not deny any of the propositions of law urged by the Respondents on this point.* It is submitted that no matter how broadly or narrowly the rule of equitable liens or constructive possession, or property in *gremio legis*, be interpreted, at least two essential requisites (as set forth below) are lacking in the present petition, treating the latter as a supplemental bill".

Counsel proceed then to set forth the two essential requisites lacking, to-wit: on Page 14 under Paragraph 1, "in order that an equitable lien may at-

tach to property, it is essential that such property be specifically described in the bill." This is plainly a fallacious statement in that it is not necessary that property should be accurately, minutely and particularly described in an original creditors bill in order that an equitable lien may attach to the property as will be seen by reference to

Miller v. Sherry, 69 U. S. (2nd Wall.) 237

quoted by counsel but the true statement is that in order to constitute "*Constructive notice*" of the claimed equitable lien the property must be accurately described in the original bill. We think that the property under the decision of *Miller v. Sherry* was accurately enough described even for constructive notice as Mr. Justice Swain said in that case at Page 250 of the *2nd Wallace*, quoting,

> "In Griffith v. Griffith, 9th, Page 317, it is said 'to have made such a bill *constructive* notice to a purchaser from the defendant down, it would have been necessary to allege therein that these particular lots, or that *all the real estate of the defendant* in the City of New York had been purchased and paid for either wholly or in part with the funds of the infant complainant. Or some other charge of a similar nature should be inserted in the bill to enable purchasers by examination of the bill itself to see that this complainant claimed the right to, or had some equitable lien in the premises'."

Petitioner, as counsel for the fraudulent grantee, did not need constructive notice. He knew the whole facts, and as testified to in the main case,

showed her how to make entries in her books, attended to her tax claims and knew the very intricacies of the fraudulent transfers, and he cannot now seek to hide behind any technical, "limited" or "guarded" defense of failure of description to give constructive notice.

The second alleged requisite lacking in the case below is alleged by counsel for the petitioner under No. 2, Page 15 of his brief as follows:

> "2. It is elementary that in order for an equitable lien to attach by virtue of the mere filing of a creditor's bill, the property sought to be charged with such lien must be within the jurisdiction of the Court".

Had counsel read further and desired to quote from the much quoted authority of *Miller v. Sherry* he could have found this very proposition set forth by Justice Swain at *Page 249* of the *2nd Wallace* in the following language:

> "When the object of the suit is to compel the conveyance of the legal title by the defendant, and the decree does not require a sale, the title will not pass until the deed is executed unless it be provided, as has been done in some of the States, by statute, that the decree itself shall operate as a conveyance. In all such cases, the court has power to compel the defendant to convey. When the property is beyond the local jurisdiction of the court, and the defendant is before it, the court can compel him to convey, as it may direct, for any purpose within the sphere of its authority. This is an ordinary exercise of the remedial juris-

diction of those courts, and the power is one of the most valuable attributes of the equity system".

Miller v. Sherry, 69 U. S. (2nd Wall.) 237

"Equity has power over the person. Even though the property is situated out of the state it is proper by orders in equity to control the property situated outside the state".

Mitchell v. Bunch (2) Paige's Chancery, 22 Am. Dec. 669

Since no authority is cited for this proposition, No. 2, we take it that counsel means to state that when a bill to set aside fraudulent conveyances is filed that regardless of knowledge of the fraud, if the property happens to be without the state, one, knowing of the fraud, can safely take the property with or without consideration, and if he, personally, afterwards, comes within the jurisdiction of the court his transfer from the fraudulent grantee, with knowledge of the equities, is free from attack, because the property so transferred was without the state, or without the jurisdiction of the court. As to the strict definition of a "lien" there may be no lien on property not within the jurisdiction of the court upon the filing of the bill, but there rests upon all persons everywhere the duty, whether attorney or layman, to do the right and equitable thing, and any court of equity with jurisdiction of the person would enforce the equitable principles by making the person taking with knowledge of the fraud return into court the property received with such knowledge of the fraud. In the statements of the equitable doctrine that a

trust fund may be traced, and the party receiving with knowledge of the trust will be held accountable, we have been unable to find any limitations that the taker of trust funds or fraudulently conveyed property is protected by state lines, or jurisdictional lines of court. Whenever any person with knowledge of the fraud receives trust property he is liable therefor wherever he may be.

In defending the petitioner on the ground that he worked hard and was entitled to something for his services, counsel state further with great particularity the services of petitioner to the fraudulent grantee in preserving the estate and in preventing its deliverance to the creditors, but we think that this defense would be more properly made in the court below. They see now that there must be some defense made for the action of their client in taking so large a portion of the estate with full knowledge of the equities involved, and are attempting here to try the case upon the merits as to whether or not the petitioner was entitled to something for his services. We notice particularly that the contract between the fraudulent grantee and petitioner is not set forth. The record will show (R. Page 149 of cause No. 433) that petitioner came to Mississippi as special counsel for this fraudulent grantee and spent seventeen months in the home of the fraudulent grantee in Mississippi not only assisting in an effort to withhold the property finally adjudged by the court to have been fraudulently transferred, but in filing counter suits in the sum of $10,000,000.00 or so, and in going through various forms of litigation during the entire seventeen months in an effort to prevent the delivery

of the estate to the creditors. The record in cause No. 433 shows (Page 149) that he was formally accepted as a member of the bar of the court before which this case was tried. He was also admitted to practice in the several courts of Mississippi where various branches of the case were litigated, and that during his stay these various funds were withdrawn. Who knows what the contract was between the fraudulent grantee and this petitioner? The court is not informed as to whether or not there may be agreements existing between the parties in writing, or otherwise, which would clear this situation up. The respondents only ask that this case be returned to the district court where these questions may be inquired into, and the petitioner may be given the chance, without limited or guarded appearances, to freely, and frankly, defend his title to that portion of the trust estate.

Respectfully submitted,

GERALD FITZGERALD,
Counsel for Respondents.

SAM C. COOK,
GARNER W. GREEN
of Counsel

CORRECTED COPY

pp 2, 3, 4

SUPREME COURT OF THE UNITED STATES.

No. 432.—October Term, 1931.

William E. Lamb, Petitioner, *vs.* Sterling B. Cramer, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[March 14, 1932.]

Mr. Justice Stone delivered the opinion of the Court.

In this case certiorari was granted, 284 U. S. —, to review a judgment of the Circuit Court of Appeals for the Fifth Circuit, 48 F. [2d] 537, reversing a decree of the District Court for Northern Mississippi, which quashed citation issued on respondent's petition to punish Lamb for contempt, and which dismissed the petition.

The petition was ancillary to a suit brought to set aside conveyances of land and other dispositions of money and personal property by the defendant Holland to other defendants, as in fraud of judgment creditors. The petition set up that pending the suit Holland had transferred to Lamb, who was acting as her attorney, a substantial part of the property involved in the suit, said to have been in payment of attorney's fees. It prayed citation against Lamb, the petitioner here, to show cause why he should not be held in contempt of court, and for other relief, including an injunction restraining further transfers of the property, and the cancellation of those already made.

Lamb appeared and answered the petition as one to punish for contempt. Pending disposition of that proceeding, final decree, in the main cause, was entered on consent, declaring that the judgments of the plaintiffs in that suit were a lien on the property described in the bill from the date of its filing, and appointing a receiver to take possession of the property and liquidate the lien. The decree as entered was stated to be without prejudice to the rights of Lamb, who was not a party to it, and reserved to the court jurisdiction of the cause to make further orders for the

preservation of the rights of the parties. The petition in the contempt proceeding then pending was later dismissed by the district court on the motion of Lamb, setting up want of jurisdiction of the subject matter and of his person.

The court below rightly held that upon the facts presented by the petition, proceedings might be had against Lamb, either by bill in equity, as was done by the supplemental bill filed by the receiver in No. 433, *Lamb* v. *Schmitt,* 284 U. S. —, decided this day, or by contempt proceedings, as in the present case, or by both, to compel restoration of the diverted property to the custody of the court. The petitioner, as counsel in the principal suit, had notice of the equities alleged in the bill. So far as he acquired, *pendente lite,* any interest in the property involved in the suit, he was not only subject to those equities, but bound by any decree which the court might make with respect to it, to the extent that it might adjudicate the rights of the plaintiffs against the defendants. *Independent Coal & Coke Co.* v. *United States,* 284 U. S. —, decided February 15, 1932; *Mellen* v. *Moline Malleable Iron Works,* 131 U. S. 352, 371; *Tilton* v. *Cofield,* 93 U. S. 163; *Warren* v. *Marcy,* 97 U. S. 96, 105; cf. *Terrell* v. *Allison,* 21 Wall. 289. The provision in the decree that it should be without prejudice to the rights of Lamb postponed until further order of the court the adjudication of his rights, but did not forestall it. His receipt and diversion of the property, which was then *in gremio legis,* see *Metcalf* v. *Barker,* 187 U. S. 165, 173 *et seq.; Pierce* v. *United States,* 255 U. S. 398, tended to defeat any decree which the court might ultimately make in the cause. That and his retention of the property after the decree was entered were in fraud of the rights of the plaintiffs to prosecute the suit to its conclusion, and an obstruction of justice constituting a contempt of court which might be proceeded against civilly. *Merrimack River Savings Bank* v. *Clay Center,* 219 U. S. 527, 535-536; *Clay* v. *Waters,* 178 Fed. 385, 390, 391. Cf. *In re Swan,* 150 U. S. 637.

The objections chiefly urged by petitioner are that the present proceeding was criminal in its nature, to punish for criminal contempt, and hence the order dismissing the petition was not appealable, *United States* v. *Sanges,* 144 U. S. 310, 323; *Toledo Newspaper Company* v. *United States,* 247 U. S. 402, 410; and that if the proceeding be regarded as civil, still no appeal would lie from

the order of dismissal, because no appeal was taken from the final decree in the principal suit.

We think it plain that the petition, although inartistically drawn, invoked the power of the court to punish for contempt in aid of the adjudication sought in the principal suit. Hence, the proceeding is to be deemed a civil one and, as the order of the District Court finally denied the relief sought, it could be appealed. The petition charged the contumacious acts of Lamb in diverting the property, which was the subject matter of the principal suit. The prayer of the petition for relief, which is determinative of the nature of the proceeding, see *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 448, declared that its purpose was to secure restoration of the diverted property in order to carry out the decree in the principal suit. The court cited Lamb to show cause why he should not be punished for contempt and why he should not be adjudged to hold the property subject to the jurisdiction of the court.

To the extent that this purpose might be effected by process against Lamb for contempt, the proceeding was remedial, to aid in giving to the plaintiffs the property which, as against the defendants in the principal suit, they were entitled to receive. It is the purpose of the punishment, rather than the character of the act punished, which determines whether the proceeding is for civil or criminal contempt. *Gompers* v. *Bucks Stove & Range Co., loc. cit. supra; Doyle* v. *London Guarantee & Accident Co.*, 204 U. S. 599, 604-605, 607. Even though the particular acts of the petitioner may take the characteristics of both a civil and a criminal contempt, and so may not be classified as exclusively one or the other; see *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 329, still, under the allegations and prayer of the petition, it would have been competent for the District Court to have punished the contempt by its coercive order until Lamb made restitution of the property or to have imposed a fine, payable to the receiver, compensating for its taking. A proceeding to secure such relief is civil in its nature. See *Gompers* v. *Bucks Stove & Range Co., supra*, p. 449; *Bessette* v. *W. B. Conkey Co., supra*, p. 338; *Leman* v. *Krentler-Arnold Hinge Last Co.*, 284 U. S. —, decided February 15, 1932.

The decree of the District Court, dismissing the petition, finally adjudicated the rights asserted by it. *Shaffer* v. *Carter*, 252 U. S.

37, 44; *The Pesaro,* 255 U. S. 216, 217; *Rosenberg Bros. & Co.* v. *Curtis Brown Co.,* 260 U. S. 516, 517. The proceeding, based on transactions had with the property involved in the principal suit, was in aid of that suit and of any decree which might be entered in it. It could be maintained, independently of the suit, either before or after the decree was entered, so long as it remained unsatisfied; and the appeal was not dependent upon an appeal from the decree. See *Root* v. *Woolworth,* 150 U. S. 401, 411; *Leman* v. *Krentler-Arnold Hinge Last Co., supra; Gompers* v. *Bucks Stove & Range Co., supra,* pp. 451-452; ~~*Independent Coal & Coke Co.*~~ v. *United States, supra.*

The petition for certiorari urged as a ground for granting it that the court below reversed on errors not assigned. It is true that the assignments erroneously described the order of the District Court as one sustaining a motion to quash the service of process, a mistake which may well have been induced by the inept use of language in the motion. But the assignments, despite their lack of clarity, are not incapable of being construed as asserting the grounds for reversal adopted by the court below and stated in this opinion. In any case, the court below was not precluded from reversing for errors appearing on the face of the record, even though unassigned. *McBride* v. *Neal,* 214 Fed. 966, 969; *United States* v. *Tennessee & Coosa R. R. Co.,* 176 U. S. 242, 256; cf. *Weems* v. *United States,* 217 U. S. 349; *Duignan* v. *United States,* 274 U. S. 195, 200. See also Rules 8 and 11, C. C. A. 5th; *Johnson Farm Loan Co.* v. *McManigal,* 288 Fed. 185, 186; *Grafton* v. *Meikleham,* 246 Fed. 737, 738, cert. den. 246 U. S. 665; *Jones* v. *Pettingill,* 245 Fed. 269, 273-274, cert. den. 245 U. S. 663.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.